StanfordLawSchool

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Stanford Grading System

Dear Judge:

Since 2008, Stanford Law School has followed the non-numerical grading system set forth below. The system establishes "Pass" (P) as the default grade for typically strong work in which the student has mastered the subject, and "Honors" (H) as the grade for exceptional work. As explained further below, H grades were limited by a strict curve.

H	Honors	Exceptional work, significantly superior to the average performance at the school.
P	Pass	Representing successful mastery of the course material.
MP	Mandatory Pass	Representing P or better work. (No Honors grades are available for Mandatory P classes.)
MPH	Mandatory Pass - Public Health Emergency*	Representing P or better work. (No Honors grades are available for Mandatory P classes.)
R	Restricted Credit	Representing work that is unsatisfactory.
F	Fail	Representing work that does not show minimally adequate mastery of the material.
L	Pass	Student has passed the class. Exact grade yet to be reported.
I	Incomplete	
N	Continuing Course	
[blank]		Grading deadline has not yet passed. Grade has yet to be reported.
GNR	Grade Not Reported	Grading deadline has passed. Grade has yet to be reported.

In addition to Hs and Ps, we also award a limited number of class prizes to recognize truly extraordinary performance. These prizes are rare: No more than one prize can be awarded for every 15 students enrolled in a course. Outside of first-year required courses, awarding these prizes is at the discretion of the instructor.

* The coronavirus outbreak caused substantial disruptions to academic life beginning in mid-March 2020, during the Winter Quarter exam period. Due to these circumstances, SLS used a Mandatory Pass-Public Health Emergency/Restricted Credit/Fail grading scale for all exam classes held during Winter 2020 and all classes held during Spring 2020.

For non-exam classes held during Winter Quarter (e.g., policy practicums, clinics, and paper classes), students could elect to receive grades on the normal H/P/Restricted Credit/Fail scale or the Mandatory Pass-Public Health Emergency/Restricted Credit/Fail scale.

The five prizes, which will be noted on student transcripts, are:

- the Gerald Gunther Prize for first-year legal research and writing,
- the Gerald Gunther Prize for exam classes,
- the John Hart Ely Prize for paper classes,
- the Hilmer Oehlmann, Jr. Award for Federal Litigation or Federal Litigation in a Global Context, and
- the Judge Thelton E. Henderson Prize for clinical courses.

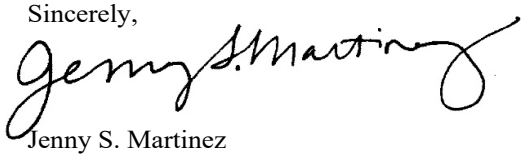
Unlike some of our peer schools, Stanford strictly limits the percentage of Hs that professors may award. Given these strict caps, in many years, *no student* graduates with all Hs, while only one or two students, at most, will compile an all-H record throughout just the first year of study. Furthermore, only 10 percent of students will compile a record of three-quarters Hs; compiling such a record, therefore, puts a student firmly within the top 10 percent of his or her law school class.

Some schools that have similar H/P grading systems do not impose limits on the number of Hs that can be awarded. At such schools, it is not uncommon for over 70 or 80 percent of a class to receive Hs, and many students graduate with all-H transcripts. This is not the case at Stanford Law. Accordingly, if you use grades as part of your hiring criteria, we strongly urge you to set standards specifically for Stanford Law School students.

If you have questions or would like further information about our grading system, please contact Professor Michelle Anderson, Chair of the Clerkship Committee, at (650) 498-1149 or manderson@law.stanford.edu. We appreciate your interest in our students, and we are eager to help you in any way we can.

Thank you for your consideration.

Sincerely,



Jenny S. Martinez
Richard E. Lang Professor of Law and Dean

Updated May 2020

Barton Thompson
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June 03, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am writing to recommend Hutchinson Fann for a clerkship in your chambers. Hutchinson is exceptionally smart, as well as a terrific researcher and writer. He is personable and reliable and works hard at everything he does. He has all the attributes that you would want in a clerk and thus has my strongest recommendation.

Hutchinson was my research assistant last fall (2022) and helped me both edit a new book that is about to be published and research a future article on California's recognition of the human right to water. He did a superb job on both projects. Hutchinson proved to be an excellent editor. Hutchinson read through my entire draft, found ways to improve it, caught errors, and checked all of my citations. His suggested edits were excellent, increasing clarity and eliminating unnecessary verbiage. Hutchinson also did a great job of substantively checking every citation, ensuring that they supported the text, and proofreading the citations for style. Hutchinson did a similarly superb job of researching California's statutory recognition of the human right to water. He tracked down the legislative history of the state statute, which was not easy both because California legislative histories are never easy to compile and because it took several years and several bills to get the law passed. Hutchinson also tracked down and analyzed every place where the human right to water has been cited in subsequent legislation, administrative regulations, and agency policies.

Given Hutchinson's great research for me on California's human right to water, I asked him to join me as an author of the paper that I am writing on the subject (something that I seldom do with students). His research, and enthusiasm for the topic, however, convinced me that he would be an excellent co-author. His work on the article over the last two quarters has confirmed my instinct. The article looks at California's statutory recognition of the human right to water, which expressly provides that the right is not enforceable in court, and asks two questions. First, what is the value of a "right" that is not enforceable? Second, are there any unique benefits to having an unenforceable right? To help answer these questions, Hutchinson conducted extensive research on international "soft law" and its domestic counterparts. He and I also have been interviewing scores of activists, government officials, and others involved with the human right to water in California. Hutchinson has done a terrific job in both the research and the oral interviews. He also has prepared an initial draft of the first section of the paper. As I hoped and expected, the draft is cogent, well-organized, and grammatical. Hutchinson also has brought enthusiasm to our work together, which is infectious. And he's been thoroughly reliable. Indeed, he's a better co-author than many of my faculty colleagues at other universities with whom I have co-written books or articles in the past.

Hutchinson also took my first-year Property class last year (2022). He was one of the best members of the class. He spoke up on the first day of class and was subsequently one of the most reliable participants in class discussions. He knew the materials cold, and his comments showed analytical skill and insightfulness. He also wrote excellent answers to the final examination questions and earned an Honor in the class.

Hutchinson also stutters. I did not realize that when he first spoke up in my Property class because he somehow made a lengthy and elegant comment without his stutter ever appearing. The stutter, however, is frequently there. It's as much a part of Hutchinson as a birthmark or a tick. But it does not affect his ability to communicate clearly and effectively, which is what matters. I've known many students who do not stutter but are not good communicators. Hutchinson is a great communicator who stutters. It's telling that he is an aspiring podcaster. His stutter does not stand in Hutchinson's way.

Hutchinson is also highly personable. He is poised and deliberate, yet easygoing. He always seems to be in a good mood, and no task, no matter how difficult, seems to faze him. I've enjoyed every conversation with him. He is naturally inquisitive and interested in virtually everything. He is also an accomplished Spanish guitarist. (If you are interested in listening to him play, you can see him perform at a TED performance at UCLA here: https://www.youtube.com/watch?v=dl00spWTKIw.)

As you can tell, I'm an enthusiastic fan of Hutchinson. He has my strongest recommendation.

Sincerely,

/s/ Barton Thompson

Robert Weisberg
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June 07, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I give my very warmest recommendation for Hutchinson Fann, Stanford J.D. 2024, for a clerkship. He is a superlative candidate across all dimensions.

I know Hutchinson well in three contexts: He was a terrific class participant in my section of the required first-year course in Criminal Law, and he wrote an exam that easily crossed the hurdle into the Honors range. He reprised that performance in the beginning of the 2022-2023 academic year in my elective in Criminal Investigation. That course requires the students to run the very difficult gauntlet of searches and seizures and interrogation law, and once again, Hutchinson was an active and acute class participant and scored an Honors exam. Let me emphasize that I am somewhat infamous at the law school here for giving very difficult exams—best described as time-pressured issue-spotters. This is not necessarily a compliment to me, but it does ensure that success on my exams is pretty much a guarantee of the most clerkship-relevant skills in legal reasoning and analytic writing. An excellent law student could have an unlucky bad day on my exam, but a merely fair law student could not have a lucky excellent day, so I am very confident in Hutchinson's abilities. I'll add that I developed a certain affection for him in class because of all his evident, very gentle graciousness and generosity in the way he participated in discussions and comported with other students. He's a very special person.

Now probably the most detailed recommendations for Hutchinson will come from two of my colleagues, Professor Buzz Thompson and Professor Lawrence Friedman. Obviously dazzled by his writing and intellectual depth, both of my colleagues have brought Hutchinson into partnership, indeed co-authorship, on major research projects. But I think I can add another dimension to what will surely be their exceptional recommendations.

During the spring of 2023, Hutchinson has been on a full-time externship in the Criminal Appellate Division in the US Justice Department. I agreed to be the faculty supervisor for this work. Aside from the student's work obligations, externs must provide their faculty supervisors with weekly so-called reflection papers in which they both report on their specific projects and offer more generalized jurisprudential thinking about what they've learned. In the best of these papers, the extern does not just talk about legal doctrine. Rather, the goal is to offer insights into professional norms and institutional structures, and behavior that they observe in the host agency. Notably, Hutchinson's office deals with lower court decisions that have been adverse to the government, and he has to advise his bosses on whether those decisions should be left standing or should be pursued further—most obviously, with the possibility of recommending to the Solicitor General that certiorari be pursued.

In the years I've been supervising externships, I've rarely seen reflection papers as wise, thoughtful, and creative as Hutchinson's. He has focused on a wide variety of topics ranging from how the federal DOJ deals with errors by local police under the Fourth and Fifth Amendments to all the nuances and complexities of the federal sentencing guidelines. The striking thing about his papers is that he first shows, as one would predict, a superior understanding of the legal issues in these cases but also a preternatural wisdom about the significance of the lower court holdings. He is always deeply thoughtful about the legal risks of them having some influence on other courts, counterbalanced by the likelihood of government success in the Supreme Court.

This combination of skills Hutchinson has evinced in these papers is, for me, an absolute guarantee of not just technical skill but also the legal and professional maturity that he will bring to the judge for whom he clerks.

If I can supply further information about Hutchinson, please let me know. Indeed, feel free to call me at your convenience via my cell phone: (650) 888-2648.

Sincerely,

/s/ Robert Weisberg

Lawrence M. Friedman
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May 31, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am happy to write a recommendation letter for Hutchinson Fann, who is a student at Stanford Law School, and also my current research assistant. He is a graduate of Pomona College, where he graduated *magna cum laude,* and where he had an outstanding record. Political science was one of his major interests at that school.

This is an exceptionally gifted young man, as his transcript makes clear; his classroom performance at Stanford Law School has been exceptionally good. His transcript is peppered with Honors, and he is clearly one of the top students in a cohort of high-achievers. He is also an online editor of the *Stanford Law Review*. He is, in general, quite active in student affairs at the law school.

In early 2023, I posted a need for a research assistant; I had quite a few applicants, but I chose Hutchinson, whom I had not met before, after I interviewed him. He seemed the most promising, and the most intellectually ambitious of the group. This turned out to be a very wise choice. He has a lively mind and absorbs ideas and insights readily. He has proved to be an ideal RA. In the first stages of our work together, he did a good deal of the ordinary work of a research assistant: finding sources, checking these sources, filling in gaps in my own research, and, in general, helping me out. He was invaluable: he did his tasks with speed and rigor, and he showed enormous initiative. He was particularly helpful on two projects of mine: one dealt with the history of workers' compensation, and another on the history of abortion law. Both of these have now been accepted for publication, and I am very grateful to him for his help.

Hutchinson quickly proved himself indispensable. So much so, that I decided to make him a collaborator and co-author when I moved on to another project. This is a historical study of newspaper coverage of the abortion controversy and abortion law in the late 19th and early 20th centuries; and what press coverage reveals about the law and politics of abortion in the days before *Roe v. Wade*. Hutchinson is a full partner in this enterprise. He has done most of the work of collecting data from the primary sources that are at the core of the study. I am extremely impressed with his work, which has been done quickly, and accurately. He has also made valuable contributions to the analysis of the data, and to the range of conclusions we are drawing from the data. We expect to have a draft ready in the summer. In sum, his role in this project has been absolutely essential. I have also been impressed with his enthusiasm and his total reliability.

He is also, I should add, working with Professor Barton "Buzz" Thompson, of our faculty, on an issue concerning water rights in California. I believe Professor Thompson, too, has made him a co-author of the article. I think it is rare for a law student to be chosen by two separate faculty members to work in collaboration on publishable work. But Hutchinson is not an ordinary student. He is a person of great energy, who is capable of doing a great deal and with both speed and rigor.

Hutchinson has talents, interests, and skills, that would make him, I believe, an ideal clerk to any federal judge. He thrives on work. He is also, I should add, a very pleasant young man; and he will be a terrific lawyer someday. I strongly urge you to interview him. I would be happy to talk further if you think that would be helpful. In any event, he has my very high recommendation and endorsement.

Sincerely,

/s/ Lawrence M. Friedman

Writing Sample Cover Letter

Hutchinson Fann

This writing sample is a draft of a section of an appellate brief I wrote in May 2023, while interning at the Department of Justice, Criminal Appellate Section. I wrote this draft under attorney supervision and use it as a writing sample with my supervisor's permission. This draft differs from what the Department will ultimately file in court and does not necessarily represent the Department's views.

Given the ongoing nature of the case, in accordance with Criminal Appellate policy, I have changed the defendant's name to "Doe" and redacted citations to the record. This draft is my own work; I wrote the draft and edited it after receiving comments from my supervisor.

Because other parts of the brief explain the general facts of the case, those facts are not included in my draft. For context, Doe, a law enforcement officer, was convicted of wire fraud, federal program theft, a civil rights violation, and conspiracy, and he was acquitted on three counts related to an alleged cover-up of the civil rights violation. Co-defendants were convicted on some of the obstruction-related charges.

This section of the brief responds to Doe's contention that the district court sentenced him based on an erroneous understanding of the verdict.

Hutchinson Fann Writing Sample

I. The District Court Did Not Plainly Err in Determining Doe's Sentence.

Doe contends that the district court erred by using incorrect information in determining his sentence. Br. X. This contention is meritless.

A. Background

In calculating Doe's guidelines range, the Probation Office divided the counts into two groups. JA-XX. Group 1 covered wire fraud, federal program theft, and the conspiracy to commit both offenses. *Id.* Group 2 covered the civil rights offense. JA-XX. With respect to Group 2, the Probation Office applied a two-level enhancement for obstruction because Doe "attempted to destroy or conceal evidence and he lied to a law enforcement officer which significantly obstructed or impeded the investigation and prosecution of this offense." JA-XX. Doe objected to this enhancement. JA-XX. At the hearing for objections to the PSR, defense counsel argued that the sentencing guidelines were improperly calculated because the obstruction enhancement involved acquitted conduct. JA-XX. Counsel argued that because Doe was "found not guilty of tampering, falsification of records, or false statement," the obstruction enhancement should not apply. *Id.* The court sustained Doe's objection but noted that a court can consider acquitted conduct for a sentencing enhancement if the conduct was proved by a preponderance of the evidence. JA-XX.

At sentencing, the court began by listing the offenses of which Doe was found guilty: conspiracy, deprivation of civil rights, federal program theft, and wire fraud. JA-XX. The court noted that it had "sustained Mr. Doe's objection to the adjustment for

obstruction under Group 2 of the offenses." *Id.* The court then walked through the guidelines calculations, again correctly enumerating Doe's guilty offenses. JA-XX. Turning to Group 2, the court noted that no obstruction-related enhancement would apply because the court had sustained the "obstruction-related count." JA-XX. In his request for a non-custodial sentence, defense counsel brought the court's attention back to the multiple "charges in which [the jury] found [Doe] not guilty." JA-XX.

The court then reviewed the § 3553(a) factors and enumerated Doe's guilty offenses for a third time. JA-XX. In explaining why it found Doe's proposed list of comparator cases unpersuasive, the court noted that "[i]t's atypical that a public official would be convicted of deprivation of civil rights, federal program theft, and providing a false statement to the FBI at the same time." JA-XX. Then the court stated that "[the jury] did not convict on one of the counts, which I believe was the obstruction, and for that reason I sustained the objection to an obstruction count and Mr. Doe benefited from that because his guidelines actually became less." JA-XX. The court sentenced Doe to 46 months, the bottom of the guidelines range. JA-XX.

B. Standard of Review

This Court ordinarily reviews sentencing decisions for abuse of discretion. *United States v. Garcia-Lagunas*, 835 F.3d 479, 495 (4th Cir. 2016). But because Doe failed to object to the alleged sentencing errors, the Court reviews for plain error. *Id.* To establish plain error, the defendant bears the burden of showing (1) error that (2) was "clear or obvious, rather than subject to reasonable dispute," (3) "affected [his] substantial rights,

which in the ordinary case means he must demonstrate that it affected the outcome of district court proceedings," and (4) "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings." *Puckett v. United States*, 556 U.S. 129, 135 (2009) (quotation marks omitted). "Meeting all four prongs is difficult, as it should be." *Id.* (quotation marks omitted).

C. The court did not make an error here, much less a clear or obvious error.

The court did not err here. Doe contends that three of the court's comments at sentencing illustrate that it misunderstood the counts on which he was found guilty. Br. X. Though he does not explain why this would constitute error, Doe's claim sounds in a due process right to be sentenced based on accurate information. *See United States v. Lee*, 540 F.2d 1205, 1211 (4th Cir. 1976) ("[Courts] recognize a due process right to be sentenced only on information which is accurate."); *Townsend v. Burke*, 334 U.S. 736, 741 (1948) (finding a due process violation when the defendant was sentenced "on a foundation so extensively and materially false"). Sentencing decisions may not be based on "misinformation of a constitutional magnitude." *United States v. Tucker*, 404 U.S. 443, 446-47 (1972). A mistake rises to the level of a due process violation, however, only when the information used by the court was both (1) materially false and (2) demonstrably the basis for the sentence. *Jefferson v. Berkebile*, 688 F. Supp. 2d 474, 485 (S.D. W. Va. 2010) (citing *Jones v. United States*, 783 F.2d 1477, 1480 (9th Cir. 1986)); *United States v. Pileggi*, 361 F. App'x 475, 480 (4th Cir. 2010) (Traxler, J., dissenting) (citing *United States v. Carr*, 66 F.3d 981, 983 (8th Cir. 1995) (per curiam)). Here, the

court's statements were not materially false, nor were they demonstrably the basis for the sentence.

i. The challenged facts were not materially false.

To begin, the facts in question were not materially false. A fact is materially false if it lacks "some minimal indicium of reliability beyond mere allegation." *United States v. Ibarra*, 737 F.2d 825, 827 (9th Cir. 1984) (citation omitted). Errors rising to the level of material falsity involve serious, pervasive misunderstandings about the case. *See, e.g.*, *Farrow v. United States*, 580 F.2d 1339, 1358 (9th Cir. 1978) (discussing *United States v. Weston*, 448 F.2d 626 (9th Cir. 1971)) (material error when a "sentence was explicitly based upon unverified, unreliable charges of very serious criminal conduct"); *Tucker*, 404 U.S. at 447 (material error when the sentence was based on two previous convictions that were "wholly unconstitutional").

Here, there was no material falsity; the record shows that the court understood that Doe was acquitted on all three counts that comprised the obstructive conduct. The court enumerated all of Doe's convicted offenses three times during the sentencing hearing and did not include any of the obstruction-related offenses. *See* JA-XX. Defense counsel himself brought the court's attention to the multiple "charges in which [the jury] found [Doe] not guilty." JA-XX. Yet Doe now claims that the court did not understand that "Doe was acquitted of three counts submitted to the jury and not just one count." Br. X. Doe points to three stray statements from the court during the

sentencing hearing to support his argument. Br. X. None of these statements show that the court made a material error.

First, Doe points to the court's statement that, "based on evidence presented to the jury, Mr. [Doe] and his codefendants attempted to conceal the unlawful deprivation of Mr. [victim]'s constitutionally protected rights." Br. X; JA-XX. This statement was correct. The court did not state that Doe was found guilty of counts related to this behavior; rather, the court stated that "evidence presented to the jury" indicated this behavior, which was true. JA-XX; *see United States v. Bernard*, 757 F.2d 1439, 1444 (4th Cir. 1985) (holding that a sentencing judge may consider evidence introduced about crimes for which the defendant was acquitted). Thus, there is no indication of material falsity here.

Second, Doe points to the court's observation, when considering Doe's proposed comparator cases, that "[i]t's atypical that a public official would be convicted of deprivation of civil rights, federal program theft, and providing a false statement to the FBI at the same time." Br. X; JA-XX. Although Doe was not convicted of providing a false statement, this stray statement does not show that the court actually believed Doe was so convicted, as the court repeatedly listed Doe's convictions correctly, without including the false statement. *See* JA-XX. Moreover, the court's overarching point in making this statement—that Doe's proposed comparator cases did not involve *both* a civil rights violation and financial fraud—was correct, which further points against material falsity. *See* JA-XX; *United States v. Stevenson*, 573 F.2d 1105, 1107 (9th Cir. 1978)

(no due process violation, despite a court's incorrect statement about a co-defendant's record, because the misstatement was part of a broader conclusion about the co-defendant's background that was supported by "substantially accurate" information).

Finally, Doe argues that the court mistakenly believed he was convicted on two of the obstruction counts because the court stated that "[the jury] did not convict on one of the counts, which I believe was the obstruction, and for that reason I sustained the objection to an obstruction count." Br. X; JA-XX. But the context of the court's repeated correct recitations of Doe's convictions contradicts this argument. *See* JA-XX. This context illustrates that the court here meant that Doe was acquitted of the obstructive *conduct*, which together constituted the Guidelines enhancement that the court struck. Br. X. The exact number of acquitted obstruction counts was not the point, as the court's qualification of "I believe" indicated. Br. X. After all, it would make little sense for the court to justify sustaining the objection to the obstruction enhancement on the grounds that Doe was convicted of two obstruction offenses and acquitted on one—without mentioning any distinction between the counts—as Doe's interpretation of the statement here would require. Br. X.

ii. The challenged facts were not demonstrably the basis for the sentence.

The facts in question were also not demonstrably the basis for the sentence. For a challenged fact to be demonstrably the basis for a sentence, the defendant must show that the "sentencing judge relied, at least in part, on this information." *United States v. Rachels*, 820 F.2d 325, 328 (9th Cir. 1987); *see Farrow*, 580 at 1359 (not demonstrably the

basis for the sentence when the court did not make it "abundantly clear that (the challenged information) was the basis for" the sentence). Here, there is no evidence that the sentence was based on acquitted conduct, so this basis for sentencing is certainly not demonstrable from the record.

Given that the obstruction-related conduct was grouped into Group 2 and the court sustained the obstruction enhancement, it would not have made any difference to the sentencing guidelines calculation whether the jury acquitted Doe on one count or three counts of the obstruction-related conduct. JA-XX; JA-XX. Nor did the court give any indication in explaining the sentence that the obstruction-related counts played a role in the court's final sentencing determination of 46 months, which was at the bottom of the guidelines range. JA-XX. Rather, the court emphasized that the factors motivating the sentence were Doe's "high position of trust" and "high-level status" that he abused, as well as the court's desire for consistency with [co-defendant Y's] sentence. JA-XX. The lack of any role, much less a prominent role, for the challenged information means that the information was not demonstrably the basis for the sentence. *See Carr*, 66 F.3d at 984 (not demonstrably the basis for the sentence when the record showed that another fact was the "valid and adequate basis for his sentence").

iii. The court did not make a clear or obvious error.

For the reasons above, Doe cannot establish that the court established any error in its sentence, let alone a "clear or obvious" error. *Puckett*, 556 U.S. at 135. As mentioned, each of the statements in question were clarified by the court's repeated

enumeration of the correct convictions during the sentencing hearing. JA-XX. Even if the stray statements in question created ambiguity in the court's otherwise established position (they did not), ambiguity falls short of "clear or obvious" error. *Puckett*, 556 U.S. at 135 ("[T]he legal error must be clear or obvious, rather than subject to reasonable dispute.").

D. Doe has not established an adverse effect on his substantial rights or the fairness, integrity, or public reputation of the judicial proceedings.

Doe also cannot show that the error affected his substantial rights. To show an effect on his substantial rights, Doe bears the burden of showing "a reasonable probability that, but for [the error claimed], the result of the proceeding would have been different." *United States v. Dominguez Benitez*, 542 U.S. 74, 81-82 (2004) (citation omitted). The defendant cannot rely on the "mere possibility of prejudice"; rather, there "must be record-based evidence of prejudice." *United States v. Johnson*, 529 F. App'x 362, 371 (4th Cir. 2013).

Here, Doe cannot make this difficult showing. As explained, the alleged error did not affect the sentencing guidelines calculation. *See* JA-XX. And there is no evidence in the record that the alleged error affected the sentence imposed, given that the sentence was at the bottom of the sentencing guidelines and the court explained the sentence with valid factors and did not rely on the alleged error. JA-XX; *see United States v. Guajardo-Martinez*, 635 F.3d 1056, 1060-61 (7th Cir. 2011) (no plain error, despite the sentencing judge's error of considering two of the defendant's previous arrests, because

"the court did not rely solely on the arrests, and it is clear that even without the arrests, the judge would not have imposed a lower sentence"); *United States v. Evans*, No. 90-5524, 1991 WL 165231, at *2 (4th Cir. Aug. 29, 1991) (dismissing the defendant's due process claim because he did not meet his burden of showing that the district court relied on the disputed information at sentencing).

Finally, Doe has not established an adverse effect on the fairness, integrity, or public reputation of the judicial proceedings. The court relied on accurate facts in sentencing Doe at the bottom of the guidelines range and provided a thorough explanation of its decision, making this a routine case that supports public confidence in the judicial system.

Applicant Details

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Contact Phone Number	**6306217077**

Applicant Education

BA/BS From	**North Central College**
Date of BA/BS	**December 2018**
JD/LLB From	**Northwestern University School of Law** **http://www.law.northwestern.edu/**
Date of JD/LLB	**June 16, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Northwestern Journal of Human Rights**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Julius H. Miner Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**Yes**

Specialized Work Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 12, 2023

The Honorable John M. Walker, Jr.
United States Court of Appeals for the Second Circuit
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Dear Judge Walker:

Enclosed please find an application for a clerkship in your chambers for 2025-26. I graduated from Northwestern Pritzker School of Law last month. This September, I will be joining Judge Underhill's chambers for two years in the District of Connecticut.

All circuit court judges make impactive decisions, both on the "easy" cases and the "hard" cases. In Northwestern's Appellate Advocacy Center, I worked on one of these hard cases. Our incarcerated client challenged the execution of his sentence in a § 2241 habeas corpus petition. His petition was dismissed as moot once he began supervised release. In his Third Circuit appeal, we argued for overturning the single case that compelled this dismissal.

We presented the Third Circuit with two difficult decisions. One, whether oft-cited circuit precedent had been overturned by the Supreme Court, and two, how to navigate the complicated intersection of § 1983 and AEDPA. The Supreme Court offered only foggy guidance in *Spencer v. Kemna*'s plurality opinion for how federal courts should thread the needle between these statutes. The resulting circuit split—and split within the split—created a bucket of confusion encapsulating habeas petitioners like our client.

After working on this dynamic case, I knew I needed to clerk on the court of appeals. As your clerk, I would become a thorough expert in the facts and legal research on your docketed cases—both the "easy" and "hard" ones. After two years on the district court, I look forward to bringing efficient writing and research skills to your chambers.

My passion for writing extends to academic scholarship. I lead my journal's student note and comment program and authored a published note of my own: *Treaties as a Tool for Native American Land Reparations*. I additionally ghostwrote an abstract for a Northwestern faculty member's academic article. Outside of legal academia, I am a script writer for a media company owned by NBCUniversal. This position requires creativity and efficiency—the very skills I bring to my legal writing.

My application includes a resume, law transcript, and a writing sample. Letters of recommendation from the following individuals have been added by the Law School:

Professor Xiao Wang, Director, Appellate Advocacy Center, Northwestern Law, 2021-23
Director, Supreme Court Litigation Clinic, University of Virginia Law (forthcoming 2023)
x.wang@law.northwestern.edu; 312-503-1486

Professor James Pfander, Northwestern Pritzker School of Law
j-pfander@law.northwestern.edu; 312-503-1325

Professor Clifford Zimmerman, Northwestern Pritzker School of Law
c-zimmerman@law.northwestern.edu; 312-503-7043

In addition, the Law School's clerkship director, Professor Janet Brown, is available to answer your questions. You may reach her at jbrown@law.northwestern.edu or 312-503-0397.

I would value the opportunity to interview with you and discuss my qualifications and interest in the position. Thank you.

Kind Regards,

Hannah Friedle

Hannah Friedle

1360 N. Lake Shore Dr. Unit 318 | Chicago, IL 60610
(630) 621-7077 | hannah.friedle@law.northwestern.edu

EDUCATION

NORTHWESTERN UNIVERSITY PRITZKER SCHOOL OF LAW — Chicago, IL
J.D. expected, June 2023
GPA: 3.969

Activities Note & Comment Editor, NORTHWESTERN JOURNAL OF HUMAN RIGHTS
Note, *Treaties as a Tool for Native American Land Reparations*, 21 NORTHWESTERN JOURNAL OF HUMAN RIGHTS (May 2023).
Julius H. Miner Moot Court Competition, Round of 16 Competitor and Aldai E. Stevenson Best Brief Award (2022), Executive Board Member (2022-23)
Teaching Assistant, Communication and Legal Reasoning, Professor Martha Kanter (2021-23)
Research Assistant, Professor Xiao Wang (2022-23)

NORTH CENTRAL COLLEGE — Naperville, IL
B.A. Political Science, December 2018
GPA: 3.82

Honors *Magna cum laude*
Activities Model United Nations; Pi Sigma Alpha Political Science Honorary Society, Inductee

EXPERIENCE

JUDICIAL LAW CLERK – UNITED STATES COURTS — Bridgeport, CT
Judge Stefan R. Underhill, September 2023 – August 2025 (offer accepted)

QUICKFRAME — Chicago, IL
Script Writer, February 2023 – Present
Pitched and scripted creative content for video compilations on behalf of NBCUniversal.

APPELLATE ADVOCACY CENTER — Chicago, IL
Clinical Student, August 2022 – May 2023
Co-authored an opening brief filed in the Third Circuit arguing that those on supervised release may challenge the calculation of their sentence.

PAUL HASTINGS — Los Angeles, CA
Summer Associate, May – July 2022
Drafted a supplemental mediation brief and a motion in limine regarding a wrongful termination issue. Prepared and presented a workplace harassment training. Drafted litigation holds regarding a trade secret dispute.

CENTER ON WRONGFUL CONVICTIONS — Chicago, IL
Clinical Student, August 2021 – May 2022
Supported the Innocence Project's lobbying efforts to ban police deception during youth interrogations.

WESTSIDE JUSTICE CENTER — Chicago, IL
Legal Intern, May 2021 – July 2021
Co-authored a clemency petition. Drafted a complaint and a demand letter regarding a breach of contract issue.

VAIL RESORTS — Beaver Creek, CO
Fine-Dining Server, June 2018 – March 2020
Created exceptional dining experiences. Awarded the Spirit of Beaver Creek annual recognition for superior customer service.

ADDITIONAL INFORMATION

Interests Downhill skiing in the Colorado Rockies
Service Legal Observer, National Lawyer's Guild (2020 – Present)

Northwestern University
633 Clark Street
Evanston, IL 60208
United States

Name: **Friedle,Hannah**
Student ID: **3302611**

Law Unofficial Transcript

Print Date: 2023-06-12
Staff Member, Journal of Human Rights (2021-22)
Note and Comment Editor, Journal of Human Rights (2022-23)

Academic Program History

Program: **Juris Doctor**
07/30/2020: **Active in Program**

Beginning of Law Record

2020 Fall (08/24/2020 - 12/17/2020)

Course	Description	Attempted	Earned	Grade	Points
BUSCOM 510	Contracts	3.000	3.000	A-	11.010
Course Attributes:	1L required course (not CLR) Evaluated non-enrollment section in Blue First Year Students only Registrar enrollment; not a biddable class Business/Corporate transactions an element Contracts Practice Area an element of course Synchronous:Class meets remotely at scheduled time				
Instructor:	Jide Nzelibe				
CRIM 520	Criminal Law	3.000	3.000	A	12.000
Course Attributes:	1L required course (not CLR) First Year Students only Registrar enrollment; not a biddable class Synchronous:Class meets remotely at scheduled time Criminal Law and Procedure Practice Area Synchronous:Class meets remotely at scheduled time				
Instructor:	Janice Nadler				
LAWSTUDY 540	Communication& Legal Reasoning	2.000	2.000	A	8.000
Course Attributes:	1L CLR Course First Year Students only Registrar enrollment; not a biddable class Synchronous:Class meets remotely at scheduled time Synchronous:Class meets remotely at scheduled time				
Instructor:	Martha Kanter				
LITARB 530	Civil Procedure	3.000	3.000	A	12.000
Course Attributes:	1L required course (not CLR) Evaluated non-enrollment section in Blue First Year Students only Registrar enrollment; not a biddable class Civil Litigation & Dispute Resolution Procedure Practice Area present in course				
Instructor:	James Pfander				
PPTYTORT 550	Torts	3.000	3.000	A	12.000
Course Attributes:	1L required course (not CLR) Evaluated primarily by exam Evaluated non-enrollment section in Blue First Year Students only Registrar enrollment; not a biddable class Tort & Personal Injury Law				
Instructor:	Clifford Zimmerman				

			Attempted	Earned	GPA Units	Points
Term GPA	3.929	Term Totals	14.000	14.000	14.000	55.010
Cum GPA	3.929	Cum Totals	14.000	14.000	14.000	55.010

Term Honor: Dean's List

2021 Spring (01/11/2021 - 05/06/2021)

Course	Description	Attempted	Earned	Grade	Points
CONPUB 500	Constitutional Law	3.000	3.000	A	12.000
Course Attributes:	1L required course (not CLR) First Year Students only Registrar enrollment; not a biddable class Constitutional Law or Procedure an element Synchronous:Class meets remotely at scheduled time				
Instructor:	Heidi Kitrosser				
CONPUB 645	Law and Social Change	3.000	3.000	A	12.000
Course Attributes:	Evaluated primarily by exam Appellate Law Concentration Open to First Year Students Constitutional Law or Procedure an element Synchronous:Class meets remotely at scheduled time				
Instructor:	Leonard Rubinowitz				
LAWSTUDY 541	Communication& Legal Reasoning	2.000	2.000	A	8.000
Course Attributes:	1L CLR Course First Year Students only Registrar enrollment; not a biddable class Synchronous:Class meets remotely at scheduled time				
Instructor:	Martha Kanter				
LAWSTUDY 710	Privacy Law	3.000	3.000	A-	11.010
Course Attributes:	Evaluated primarily by exam Open to First Year Students Synchronous:Class meets remotely at scheduled time				
Instructor:	Matthew Kugler				
PPTYTORT 530	Property	3.000	3.000	A-	11.010
Course Attributes:	1L required course (not CLR) First Year Students only Registrar enrollment; not a biddable class Intellectual Property Practice Area present Property Practice Area present in course Synchronous:Class meets remotely at scheduled time				
Instructor:	Michael Barsa				

			Attempted	Earned	GPA Units	Points
Term GPA	3.859	Term Totals	14.000	14.000	14.000	54.020
Cum GPA	3.894	Cum Totals	28.000	28.000	28.000	109.030

Term Honor: Dean's List

2021 Summer (05/10/2021 - 08/20/2021)

Course	Description	Attempted	Earned	Grade	Points
CONPUB 740	Policing Chicago's Communities	2.000	2.000	A	8.000
Course Attributes:	Constitutional Law or Procedure an element Hybrid: Remote component and in-person mtgs				
Instructor:	Sheila Bedi				

Northwestern University
633 Clark Street
Evanston, IL 60208
United States

Name: **Friedle,Hannah**
Student ID: **3302611**

Law Unofficial Transcript

			Attempted	Earned	GPA Units	Points
Term GPA	4.000	Term Totals	2.000	2.000	2.000	8.000
Cum GPA	3.901	Cum Totals	30.000	30.000	30.000	117.030

2021 Fall (08/30/2021 - 12/16/2021)

Course	Description	Attempted	Earned	Grade	Points
CONPUB 650	Federal Jurisdiction	3.000	3.000	A-	11.010
Course Attributes:	Evaluated primarily by exam Appellate Law Concentration Recommended elective for JD students Constitutional Law or Procedure an element Civil Litigation & Dispute Resolution Procedure Practice Area present in course				
Instructor:	James Pfander				
LITARB 708	Clinic: Wrongful Convictions	4.000	4.000	A	16.000
Course Attributes:	Satisfies Experiential Learning degree req Constitutional Law Constitutional Law or Procedure an element Criminal Law and Procedure Practice Area Civil Litigation & Dispute Resolution				
Instructor:	Steven Drizin Laura Nirider				
PPTYTORT 618	Natural Resources	3.000	3.000	A	12.000
Course Attributes:	Evaluated primarily by exam Required for Environmental Law Concentration Environmental Law Practice Area in course Property Practice Area present in course				
Instructor:	Michael Barsa				
PPTYTORT 625	Estates and Trusts	3.000	3.000	A	12.000
Course Attributes:	Evaluated primarily by exam Recommended elective for JD students Open to First Year Students Family Law Practice Area in course Property Practice Area present in course Trusts and Estates Prac. Area present				
Instructor:	James Lindgren				

			Attempted	Earned	GPA Units	Points
Term GPA	3.924	Term Totals	13.000	13.000	13.000	51.010
Cum GPA	3.908	Cum Totals	43.000	43.000	43.000	168.040

Term Honor: Dean's List

2022 Spring (01/10/2022 - 05/05/2022)

Course	Description	Attempted	Earned	Grade	Points
CONPUB 669	Contemporary Supreme Ct	2.000	2.000	A+	8.660
Course Attributes:	Appellate Law Concentration Constitutional Law				
Instructor:	Tonja Jacobi				
LAWSTUDY 500	Independent Study	3.000	3.000	A	12.000
Course Attributes:	Registrar enrollment; not a biddable class Students must receive prof permission to enroll Satisfies Research Writing degree req				
Instructor:	Clifford Zimmerman				
LAWSTUDY 642	Narrative Structures	3.000	3.000	A-	11.010
Course Attributes:	Evaluated primarily by exam Open to First Year Students				
Instructor:	Steven Lubet				
LITARB 650	Civil Procedure II	3.000	3.000	A-	11.010
Course Attributes:	Evaluated primarily by exam Appellate Law Concentration Recommended elective for JD students Open to First Year Students Civil Litigation & Dispute Resolution Procedure Practice Area present in course				
Instructor:	Zachary Clopton				
LITARB 708	Clinic: Wrongful Convictions	4.000	4.000	A	16.000
Course Attributes:	Satisfies Experiential Learning degree req Constitutional Law Constitutional Law or Procedure an element Criminal Law and Procedure Practice Area Civil Litigation & Dispute Resolution				
Instructor:	Steven Drizin Laura Nirider				

			Attempted	Earned	GPA Units	Points
Term GPA	3.912	Term Totals	15.000	15.000	15.000	58.680
Cum GPA	3.909	Cum Totals	58.000	58.000	58.000	226.720

Term Honor: Dean's List

Northwestern University
633 Clark Street
Evanston, IL 60208
United States

Name: **Friedle,Hannah**
Student ID: **3302611**

Law Unofficial Transcript

2022 Fall (08/29/2022 - 12/15/2022)

Course	Description	Attempted	Earned	Grade	Points
LITARB 600	Legal Ethics	2.000	2.000	A	8.000
Course Attributes:	Appellate Law Concentration Meets Legal Ethics degree requirement Civil Litigation & Dispute Resolution				
Instructor:	Wendy Muchman				
LITARB 605	Trial Advocacy ITA	4.000	4.000	A	16.000
Course Attributes:	Satisfies Experiential Learning degree req Counts toward Civil Litigation & Dispute Res Conc Civil Litigation & Dispute Resolution Procedure Practice Area present in course				
Instructor:	Joshua Jones				
LITARB 606	Evidence (ITA)	3.000	3.000	A	12.000
Course Attributes:	Evaluated primarily by exam Recommended elective for JD students JD Program Students Civil Litigation & Dispute Resolution				
Instructor:	Joshua Jones				
LITARB 719	Clinic: Federal Appellate Prac	4.000	4.000	A+	17.320
Course Attributes:	Courses in the Law School's Legal Clinic Third year students only Appellate Law Concentration Satisfies Experiential Learning degree req Counts toward Law and Social Policy Concentration Satisfies Prof Writing degree req Criminal Law and Procedure Practice Area Civil Litigation & Dispute Resolution				
Instructor:	Xiao Wang				

			Attempted	Earned	GPA Units	Points
Term GPA	4.102	Term Totals	13.000	13.000	13.000	53.320
Cum GPA	3.944	Cum Totals	71.000	71.000	71.000	280.040

Term Honor: Dean's List

2023 Spring (01/09/2023 - 05/04/2023)

Course	Description	Attempted	Earned	Grade	Points
CONPUB 734	Anti-Discrimination Law	3.000	3.000	A	12.000
Course Attributes:	Constitutional Law or Procedure an element Law and Social Science present in course Public Interest				
Instructor:	Clifford Zimmerman				
CRIM 610	Constitutional Crim Procedure	3.000	3.000	A	12.000
Course Attributes:	Evaluated primarily by exam Appellate Law Concentration Recommended elective for JD students Counts toward Law and Social Policy Concentration Constitutional Law or Procedure an element Criminal Law and Procedure Practice Area Public Interest Procedure Practice Area present in course				
Instructor:	Meredith Rountree				
LITARB 686	Contemp Prob in Complex Lit	2.000	2.000	A	8.000
Course Attributes:	Counts toward Civil Litigation & Dispute Res Conc Civil Litigation & Dispute Resolution				
Instructor:	Adam Hoeflich				
LITARB 719	Clinic: Federal Appellate Prac	4.000	4.000	A+	17.320
Course Attributes:	Courses in the Law School's Legal Clinic Third year students only Appellate Law Concentration Satisfies Experiential Learning degree req Counts toward Law and Social Policy Concentration Satisfies Prof Writing degree req Criminal Law and Procedure Practice Area Civil Litigation & Dispute Resolution				
Instructor:	Xiao Wang				
PPTYTORT 645	Colloquium: Climate Change	2.000	2.000	A	8.000
Course Attributes:	Elective for Environmental Law Concentration Environmental Law Practice Area in course Public Interest				
Instructor:	David Dana Michael Barsa				

			Attempted	Earned	GPA Units	Points
Term GPA	4.094	Term Totals	14.000	14.000	14.000	57.320
Cum GPA	3.969	Cum Totals	85.000	85.000	85.000	337.360

Term Honor: Dean's List

Law Career Totals

Cum GPA	3.969	Cum Totals	85.000	85.000	85.000	337.360

End of Law Unofficial Transcript

Student ID: 1137581 Print Date: 06/10/22

Student Name: HANNAH R. FRIEDLE Birth Date: 04/12/XX

Address: 903 BURR RIDGE CLB
BURR RIDGE, IL 60527

NORTH CENTRAL COLLEGE 1861

Course	Title	G R D E P	Hrs Att	Hrs Calc	Hrs Cmpt	Grade Points	GPA
MTH 151	Calculus I		0.00	0.00	3.00	0.00	
MTH 152	Calculus II		0.00	0.00	3.00	0.00	
PSC 101	Intro to American Government		0.00	0.00	3.00	0.00	
PSC 221	Comparative Politics		0.00	0.00	3.00	0.00	
PSY 100	Psychology: Sci of Behavior		0.00	0.00	3.00	0.00	
	Credit by Exam Totals:		0.00	0.00	15.00	0.00	0.000
	Cumulative Totals:		0.00	0.00	15.00	0.00	0.000
Transfer Credit							
	Transfer Totals:		0.00	38.00	39.00	122.60	0.000
	Cumulative Totals:		0.00	38.00	54.00	122.60	3.226
PHY 121	Principles of Astronomy	A	3.00	3.00	3.00	12.00	
PSC 102	Intro to Internat'l Relations	A	3.00	3.00	3.00	12.00	
PSC 103	Introduction to Law	A	3.00	3.00	3.00	12.00	
	16/FA Totals:		9.00	9.00	9.00	36.00	4.000
	Cumulative Totals:		9.00	47.00	63.00	158.60	3.374
	Academic Standing: Dean's List						
COM 200	Interpersonal Communication	A	3.00	3.00	3.00	12.00	
PSC 200	Introduction to Political Sci	A	3.00	3.00	3.00	12.00	
PSY 255	Research Design/Exper (Lab)	A	3.75	3.75	3.75	15.00	
	17/WI Totals:		9.75	9.75	9.75	39.00	4.000
	Cumulative Totals:		18.75	56.75	72.75	197.60	3.482
	Academic Standing: Dean's List						
GLS 277	Seminar: Study Abroad	A	2.00	2.00	2.00	8.00	
PSC 201	Practices of Political Science	A	3.00	3.00	3.00	12.00	
PSY 220	Psychology of Adolescence	A	3.00	3.00	3.00	12.00	
PSY 345	Cognitive Psychology (Lab)	A-	3.75	3.75	3.75	13.87	
	17/SP Totals:		11.75	11.75	11.75	45.87	3.904
	Cumulative Totals:		30.50	68.50	84.50	243.47	3.554
	Academic Standing: Dean's List						
ECN 252	DEP: Macroeconomic Principles	A	3.00	3.00	3.00	12.00	
PSC ELE	DEP: Revolutions	A	3.00	3.00	3.00	12.00	
PSC ELE	DEP: United States Politics	A	3.00	3.00	3.00	12.00	
	17/FA Totals:		9.00	9.00	9.00	36.00	4.000
	Cumulative Totals:		39.50	77.50	93.50	279.47	3.606
	Academic Standing: Dean's List						
ENG 315	Advanced Writing	A	3.00	3.00	3.00	12.00	
FRN 102	Elementary French II	A	3.00	3.00	3.00	12.00	
LEV 390	Seminar on Leadership Theory	A-	3.00	3.00	3.00	11.10	
PSC 321	Model United Nations	A	3.00	3.00	3.00	12.00	
	18/WI Totals:		12.00	12.00	12.00	47.10	3.925
	Cumulative Totals:		51.50	87.50	103.50	324.57	3.709
	Academic Standing: Dean's List						
BCM 140	Nutrition (Lab)	A	3.50	3.50	3.50	14.00	
FRN 103	Elementary French III	A	3.00	3.00	3.00	12.00	
LEV 250	NCC Preceptor	A	1.00	1.00	1.00	4.00	
PHL 241	Philosophy of Law	A	3.00	3.00	3.00	12.00	
PSC 490	Seminar in Political Science	A	3.00	3.00	3.00	12.00	
	18/SP Totals:		13.50	13.50	13.50	54.00	4.000
	Cumulative Totals:		65.00	99.00	115.00	376.57	3.804
	Academic Standing: Dean's List						
FRN 201	Intermediate French I	A	3.00	3.00	3.00	12.00	
LEV 330	Conflict Resolution Clinic	A	2.00	2.00	2.00	8.00	
PHL 110	Ethics	A	3.00	3.00	3.00	12.00	
PSC 499	Independent Study Populism and Economic Policy	A	1.00	1.00	1.00	4.00	
	18/FA Totals:		9.00	9.00	9.00	36.00	4.000
	Cumulative Totals:		74.00	108.00	124.00	412.57	3.820
	Academic Standing: Dean's List						

Katherine Norris
Registrar

Student ID: 1137581 Print Date: 06/10/22

Student Name: HANNAH R. FRIEDLE Birth Date: 04/12/XX

Address: 903 BURR RIDGE CLB
BURR RIDGE, IL 60527

NORTH CENTRAL COLLEGE 1861

Course	Title	G R D	R E P	Hrs Att	Hrs Calc	Hrs Cmpt	Grade Points	GPA

****

* BA - Bachelor of Arts Degree Awarded on 12/01/18 *
* Majors Minors Specializations *
* ---------- ---------- ----------*
* Political Science Psychology *
* Honors: *
* MA - Magna Cum Laude *

****

---------- End of Official Academic Record ----------

Katherine Norris
Registrar

This transcript processed and delivered by Parchment

NORTHWESTERN PRITZKER SCHOOL OF LAW

June 12, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

Hannah Friedle, a 3L at Northwestern Pritzker School of Law, has applied to you for a clerkship that would begin after she graduates in May 2023. Hannah's a very talented law student and a delightful person. She will make an exceptional law clerk.

Hannah has been a student in two of my classes and has been a standout in both. We got to know one another in first-year civil procedure in Fall 2020, the year Covid forced classes online. I had a practice of rotating through the class in a fairly predictable manner, inviting students to join the conversation. Hannah was keen to take her shot as a participant and did a bang-up job. She was calm, knowledgeable, and articulate, with just enough playfulness to show that she was undismayed by the proceedings. She did an excellent job on the exam, earning an A grade that placed her very near the top of the class.

In Fall 2021, Hannah re-upped, enrolling in my class in the law of federal jurisdiction. Again, she was a most welcome member of the class, respectful and keen to participate. Again, she did a fine job on the exam, earning an A- grade. I was pleased that she asked me to write to you on her behalf.

Alongside her work in my class, Hannah was tackling important projects at the Northwestern Law Center on Wrongful Convictions. She came to this work after writing a clemency petition during her first year of law school with a public interest firm in Chicago. Hannah took naturally to the work, animated by an abiding sense of the injustices visited upon the wrongly convicted. It was a transformative experience for her, both in revealing something about the criminal justice system and in teaching her important lessons about the law in action.

Hannah has a native gift for legal writing. She was invited to serve as a TA for the legal writing course, doubtless a reflection of her mastery. Perhaps more impressively, she researched and wrote a Miner moot court brief in one week's time –a brief later identified as best in show. Her exams were no exception; Hannah's answers got to the point and delivered clear-eyed accounts of the proper resolution of the problem at hand.

One final point. Hannah is the first person in her family to attend law school. She worked her way through college at restaurants and lived at home to economize on the cost of living. She then decamped to Colorado, working as a server in a fine-dining, slope-side restaurant and snowboarding to work. She was there just long enough to confirm that her dream of becoming a law student was one that she could legitimately pursue. But it did not feel real to her until she arrived in Streeterville in August 2020 (via zoom). I met her in person for the first time during a Fall 2021 courtyard "reunion" of the 1L class, a class that I had known up to then entirely through a computer screen. It was a reunion, fittingly, that Hannah organized herself.

Please let me know if you have any questions. Hannah's a great law student and a great person. She'll be a terrific law clerk and a much beloved member of your chambers' family.

Respectfully,

James E. Pfander
Owen L. Coon Professor of Law
Northwestern Pritzker School of Law

James Pfander - j-pfander@law.northwestern.edu - (312) 503-1325

NORTHWESTERN PRITZKER SCHOOL OF LAW Bluhm Legal Clinic

June 12, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am a Clinical Assistant Professor at Northwestern and Director of the Appellate Advocacy Center. In that capacity, I supervise the Supreme Court and Federal Appellate Litigation Clinics. I am writing to offer my highest recommendation for Hannah Friedle, one of my Federal Appellate Clinic students. I believe Hannah would be an exceptional law clerk, for three reasons.

First, I have been so impressed by Hannah's work ethic, her fluency with complex areas of the law, and her consummate professionalism. Her stellar academic credentials reflect that intelligence and determination. And it is something that I have witnessed personally, in supervising her on a Third Circuit matter and in having her assist on some of my research.

Our Third Circuit case involves a complicated area of habeas law—specifically, the interplay between overlapping state and federal sentences, the conditions of our client's supervised release, and *Heck v. Humphrey*'s favorable-termination requirement. For most students, just listing out these facts and circumstances would prompt them to flee for the hills. Not Hannah.

No: To my knowledge, Hannah is the *only* law student to have sat in, for an entire semester, on Advanced Federal Jurisdiction. To be clear: That course won't appear *anywhere* on her transcript (she was taking another course which conflicted with one of the class times for Advanced Federal Jurisdiction). But she showed up to the class anyway, because of her interest in the topic and the opportunity to grapple with challenging concepts. If that isn't intellectual curiosity, then I'm not sure what is.

Hannah's background in federal courts prepared her well to tackle the issues in our case. I assigned her at the beginning to look at the merits of the case, and asked two other students to tackle mootness. Candidly, I did so because I didn't really understand the merits issues very well. But Hannah mastered these concepts quickly and explained them to me and the rest of the group in a clear, cogent manner.

What is more, she is a humble, consummate team player. When I reviewed the group's draft, I noticed two incredible research finds on the section assigned for the other students. I hadn't come across these cases in my own preparation, and they were directly relevant to our case. At our next supervision, I lauded these finds—they were exactly what we had been looking for. During the next break, one of the other students sheepishly mentioned that they hadn't actually found these cases. Hannah had. And then she helped integrate this case law into the overall argument. Hannah never once trumpeted her work or sought recognition. Instead, she worked quietly and doggedly to improve the team's work product. It was inspiring to watch.

I could go on and on and on about Hannah's research and writing skills. She won the Best Brief Award for the school's moot court competition—an award based on blind grading by faculty judges. She's publishing a Note on Indian law. And she's lent her support and assistance to other students in other cases, often behind the scenes. But her book smarts she be plain by a passing glance at her resume alone.

The ***second*** aspect of Hannah that I'd highlight is that she's a real person—in the most genuine sense of that term. She has lived so many different lives, all of them interesting. For several years, in college, she was a competitive sailor. After college, she worked for Vail Resorts, in part to save for law school and in part to become a talented skier and snowboarder. (I mean, how many prospective clerks have been recognized for superior customer service as a dining server?!). And now in her spare time she freelances as a scriptwriter.

Why does all (or any) of this matter? Because, I think, of reason number ***three***. The law, in some cases, isn't *just* about doctrine or application of holding to fact. It's about people. Or, more specifically, what a ruling or decision means to the parties before it. And here Hannah is the rarest of birds.

A few months ago, our client in our Third Circuit case passed away. It was a devastating loss. In virtually every situation and for virtually every other student, this news would have effectively ended our representation. It's hard enough to prevail in habeas. It's infinitely harder to even imagine a path forward, amidst a grieving team and with a client who is no longer with us. Hannah, like the other members of the team, was shaken by the news. But in the weeks that followed, the group came together, and reached out to our client's family.

Furthermore, while I prepared to file a notice of voluntary dismissal, Hannah took time to study whether we could make a colorable argument for the case to proceed to argument. She later approached me and outlined her thoughts, citing precedent as well as some prior work from a University of Virginia clinic. Her outline made me pause, think through the issues some more, and eventually decide to change course. Of course, there's no knowing whether the strategy that Hannah outlined will convince a panel of judges. But her determination to try to understand a problem from every angle, to put herself in the shoes of her client while marshalling her considerable legal talents—that's something that every teacher wishes they could impart.

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That effort, *that* persistence, and *that* geniality is why I know Hannah will be such an asset to Chambers. She thinks deeply about what the law says and what it means. Whenever I hear the phrase, "justice will be done," I think of it not in the passive sense, but in the active sense. That's because someone is making sure that it is being done. Hannah's one of those people. I hope you'll give her a chance to show you that.

Respectfully,

Xiao Wang
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NORTHWESTERN PRITZKER SCHOOL OF LAW

June 12, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write with great pleasure and to express my strongest recommendation for a judicial clerkship for Hannah Friedle. As a Northwestern Pritzker School of Law student and advisee of mine, I believe Hannah's academic fortitude, intellectual curiosity, disposition, and values will make her an invaluable law clerk in your chambers.

I met Hannah as her Torts professor during her first semester of law school. I could tell from my first interactions with Hannah that she has the humility and willingness to deeply engage with difficult questions even when other students were more timid. Hannah participated daily in class and was readily prepared for challenging follow-up questions and hypotheticals. As a professor who requires active student participation, this was refreshing and most welcome.

In addition to class participation, I assess my Torts students through multiple reflection papers, quizzes, a team writing project, and a final exam. The reflection papers engage the students on issues of policy beyond what is possible in class, such as judicial discretion and diversity representation in the legal system as well as the impact of race and gender issues on Tort law. Hannah's papers consistently contributed original, innovative perspectives based on her unique lived experiences.

For the team assignment, students work together to research and analyze a proposed tort reform healthcare bill. Working in teams allows the students to exhibit leadership skills among their peers, build their ability to recognize respective strengths and weaknesses, and ultimately consolidate that information into a strong, cohesive paper that applies the principles of Tort law to current issues. Hannah's team paper was extremely well researched, communicated with clear style and clarity, and received the highest grade in the class. Work at that level is the product of strong team members and a willingness and ability to seamlessly collaborate with peers. Knowing Hannah, I can attest to both the strength of her contributions and the balancing of others' perspectives into the final analysis.

As additional evidence of both her writing and analytical skills, Hannah (and one partner) won the Best Brief award in Northwestern's 2022 Julius H. Miner Moot Court competition. (Full disclosure: I was one of several judges who reviewed and scored the anonymously presented Moot Court briefs for evaluation.)

Based on Hannah's performance in Torts, I offered her a position as a teaching assistant, but was too late as another faculty member had already asked her and she accepted. Hannah was wise to decide to accept only one TA position (the one she had already accepted). My respect for her grew from that experience which exemplifies that Hannah's strong academic and interpersonal skills were visible across her courses.

During her second year, Hannah approached me to advise her on her Journal of Human Rights comment. I welcomed the opportunity to work with her again and her unique topic, Land Reparations for Native American Tribes (a topic well within my field because I also teach American Indian Law). My only concern, which I made Hannah aware of and she quickly addressed, was that the general area is too complex to explore without having taken the survey course. Hannah readily agreed to read numerous background sources (texts, treatises, and law reviews) and brought herself up to speed quickly. We had lengthy discussions as she learned the core aspects of American Indian Law and engaged in the nuances of the area both in this independent study and in another course (focused on current Supreme Court cases) during the same term.

Hannah's passion and interest in such a challenging topic allowed her to succeed and go above and beyond what was required of her (and what others would have done). I saw first-hand the dedication and excellence she brings to her academic commitments. Writing in Indian Law is not just an intellectual venture, though, as it tests one's integrity and moral compass as one navigates numerous sensitive issues. In her project, Hannah exhibited a high level of integrity and strong moral compass both of which speak volumes about her character and the greatness she will achieve in her legal career.

While all of this is more than sufficient to make Hannah an ideal candidate to be a judicial clerk, she will bring more to your chambers. Outside of her studies Hannah is a pleasure to know and talk with. As Chicago's COVID-19 mandates were tight then loosened, Hannah and I spent hours on Zoom then in person discussing her experiences in the Wrongful Convictions clinic, our shared appreciation for the outdoors, and many other topics. She loves the Rocky Mountains and is a disciplined skier. Her sense of humor, openness, and positive attitude are infectious. In short, Hannah is a well-rounded, mature, and talented person, and will bring more than just her intelligence and passion for the law to your chambers. Thus, I have no doubt she will be an excellent addition to your team and in completing your work.

It has been an absolute pleasure to teach and work with Hannah, and I give her my highest recommendation for a clerkship in your chambers. Should you have any inquiries or require further information, please do not hesitate to contact me.

Respectfully,

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Writing Sample

This writing sample is an excerpt of my student note, *Treaties as a Tool for Native American Land Reparations*, which was published this year in Northwestern's Journal of Human Rights. This excerpt encapsulates the recent doctrinal shift regarding whether a state can ignore indigenous treaty rights. It is a truncated version of a section where I discuss litigation over treaty rights and how it impacts land reparations.

I omitted the following sections of the article. Part I summarizes how the federal government seized land from indigenous tribes and has yet to meaningfully remedy this harm. Part II explores congressional and judicial areas that should be modified to support land reparations. Part IV explains how treaties can buttress administrative fee-to-trust land acquisitions. Part V discusses examples of how, if adopted into domestic legislation, international legal frameworks can support land reparations.

III. The Judiciary and Indigenous Treaty Rights

C. *McGirt* & *Castro-Huerta*'s Impact on Treaty Rights and Land Reparations

Two recent doctrinal shifts have impacted tribal treaty rights. In *McGirt v. Oklahoma*[1] and *Oklahoma v. Castro-Huerta*,[2] the Supreme Court considered two issues. One, whether the Muscogee (Creek) Nation's treaty right to a reservation persists, and two, whether Oklahoma can exercise criminal jurisdiction in Indian Country.[3] The heart of these issues reaches beyond criminal jurisdiction. Essentially, these cases are about whether states can lawfully ignore indigenous treaty rights.

In *McGirt v. Oklahoma*, an Oklahoma state court convicted a Seminole Nation member of three sexual offenses.[4] These crimes took place in a Tulsa suburb[5] within the Creek Nation's reservation boundaries—squarely within Indian Country.[6] Jimcy McGirt sought a new trial in federal court, arguing that the state of Oklahoma lacked the jurisdiction to criminally prosecute him.[7] He alleged that the Major Crimes Act[8] apportions criminal jurisdiction to the federal government—not the states—over certain crimes involving an Indian victim or perpetrator, or occurring in Indian Country.[9]

In a five to four decision, the Court held that Oklahoma lacked criminal jurisdiction over McGirt.[10] After a 1833 treaty established the Creek Nation's reservation,[11] another 1856 treaty

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[1] 140 S. Ct. 2452 (2020).
[2] 142 S. Ct. 2486 (2022).
[3] Indian Country refers to "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory . . . and (c) all Indian allotments, the Indian titles to which have not been extinguished." 18 U.S.C. § 1151.
[4] *Id.* at 2456.
[5] Brief of Respondent at 1, *McGirt v. Oklahoma* (No. 18-9526) (2020).
[6] *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2460 (2020).
[7] *Id.*
[8] 18 U.S.C. § 1153.
[9] *See McGirt v. Oklahoma*, 140 S. Ct. at 2460.
[10] *See id.* at 2459.
[11] *Id.* at 2461.

guaranteed that "no portion of Creek lands would ever be embraced or included within, or annexed to, any Territory or State."[12] *McGirt* held that the Creek reservation survived because Congress had not disestablished it through a clear statement of intent to do so.[13]

McGirt reiterated that the states have no place in Indian Country for three reasons. One, the Constitution entrusts Congress to regulate commerce with Native Americans.[14] Two, under the Supremacy Clause, states cannot violate or modify treaties signed between the federal government and Native tribes.[15] Three, giving states authority over Indian Country would imprudently jeopardize tribal sovereignty. "It would [] leave tribal rights in the hands of the very neighbors who might be least inclined to respect them."[16] The case was a forceful reminder that states must respect indigenous treaties.

After *McGirt*, tribes intensified litigation over treaty violations.[17] Tribes have often been told that their treaty rights cannot prevail over a state's reliance interests, res judicata, procedural bars, states of repose, and laches.[18] Oklahoma itself advanced such arguments in *McGirt*, which were dismissed by the Court as "misplaced."[19] In a powerful conclusion, Justice Gorsuch wrote:

> [M]any of the arguments before us today follow a sadly familiar pattern. Yes, promises were made, but the price of keeping them has become too great, so now we should just cast a blind eye. We reject that thinking. If Congress wishes to withdraw its promises, it must say so. Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law.[20]

[12] *Id.* at 2457 (internal quotation marks omitted).
[13] *Id.* at 2463, 2465-66, 2482. "Once a federal reservation is established, only Congress can diminish or disestablish it. Doing so requires a clear expression of congressional intent." *Id.* at 2456.
[14] *Id.* at 2462.
[15] *Id.*
[16] *Id.*
[17] *E.g.*, David Moore & Michalyn Steele, *Revitalizing Tribal Sovereignty in Treatymaking*, 96 N.Y.U. L. REV. 137, 188-89 (2022) (*McGirt* recognizes the ongoing vitality of federal-Indian treaties, endorses the viability of federal-Indian treatymaking, and strengthens claims to tribal sovereignty).
[18] *See McGirt v. Oklahoma*, 140 S. Ct. at 2481.
[19] *Id.*
[20] *Id.* at 2482.

The United States promised tribes certain guarantees: land, water, hunting rights, fishing rights, and sovereignty. *McGirt* offered hope that these treaty rights could still be upheld by courts, even when a state asserts that "the price of keeping [promises] has become too great."[21] Just two years later, *Castro-Huerta* extinguished this hope.

In another five to four decision, the Court essentially abandoned *McGirt* in *Oklahoma v. Castro-Huerta*.[22] *Castro-Huerta* and *McGirt* share analogous factual circumstances and analogous legal arguments. Victor Manuel Castro-Huerta sought a new trial, arguing that the federal government—not Oklahoma—had exclusive jurisdiction to prosecute him for his crimes in Indian Country.[23] The Oklahoma Criminal Court of Appeals vacated Castro-Huerta's conviction, noting that "*McGirt* govern[ed] this case."[24] This was an example of a post-*McGirt* state court respecting the geographical boundaries of indigenous treaties.

Oklahoma petitioned the Supreme Court for review and brazenly urged the Court to overrule *McGirt*.[25] Although the Supreme Court did not grant review of this specific question,[26] that is effectively what *Castro-Huerta* did.

Under *Castro-Huerta*, states "inherent[ly]" possess concurrent criminal jurisdiction in Indian Country over crimes by non-Indians against Indians, unless preempted by federal law.[27] States' "inherent" criminal jurisdiction has apparently existed since "the latter half of the 1800s,"[28] despite 190 years of case law to the contrary[29] and three federal statutes expanding *federal* criminal

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[21] *Id.*
[22] *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486 (2022).
[23] *Castro-Huerta v. State*, No. F-2017-1203, 2021 WL 8971915, at *1 (Ok. Crim. App. Apr. 29, 2021).
[24] *Castro-Huerta v. State*, No. F-2017-1203, 2021 WL 8971915, at *2 (Ok. Crim. App. Apr. 29, 2021).
[25] Petition for a Writ of Certiorari at 17, Oklahoma v. Castro-Huerta, 142 S. Ct. 2486 (2022) (No. 21-429); Reply Brief for the Petitioner on Petition for a Writ of Certiorari at 5, Oklahoma v. Castro-Huerta, 142 S. Ct. 2486 (2022) (No. 21-429).
[26] *See* Oklahoma v. Castro-Huerta, No. 21-429 (U.S. Jan. 21, 2022) (the Supreme Court granted review of Question 1 but not Question 2, which was whether to overrule *McGirt v. Oklahoma*.)
[27] *Oklahoma v. Castro-Huerta*, 142 S. Ct. at 2494, 2503 (2022).
[28] *Id.* at 2493, 2499.
[29] *E.g.*, *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

jurisdiction in Indian Country.[30] As Justice Gorsuch authored in dissent, Congress must have been "hopelessly misguided" in enacting Public Law 280, a federal statute *granting* certain states criminal jurisdiction over offenses in Indian Country.[31] The law was apparently never necessary since states unknowingly possessed "inherent" and "concurrent" criminal jurisdiction all along.[32] "But exactly when and how did this [jurisdictional] change happen? The Court never explains."[33]

i. *Castro-Huerta*'s incoherent rationale

Castro-Huerta is a deeply flawed case. First, the *Castro-Huerta* majority erroneously relied on the Equal Footing Doctrine to extinguish treaty rights. Under this Doctrine, every state admitted to the Union after 1798 must enter on equal footing with the thirteen original states.[34] *Castro-Huerta* held that Oklahoma's Enabling Act,[35] by virtue of its existence, repeals any treaty "that is inconsistent with the State's exercise of criminal jurisdiction throughout the whole of the territory within its limits . . . unless the enabling act says otherwise *by express words*."[36] Although the Court invokes the Equal Footing Doctrine here, it never mentions the Doctrine by name. The Court instead cites a foundational Equal Footing Doctrine case *Pollard's Lessee v. Hagan*[37] and two other Equal Footing Doctrine cases from the 1800s: *Draper v. United States*[38] and *United States v. McBratney*.[39]

Perhaps the Court never mentioned the Equal Footing Doctrine by name because their reliance on it should be foreclosed by intervening precedent. *Minnesota v. Mille Lacs Band of Chippewa Indians*[40] pronounced that when a new state geographically overlaps with treaty-protected indigenous

[30] Public Law 280, 67 Stat. 588; Major Crimes Act, 18 U.S.C. § 1153; General Crimes Act, 18 U.S.C. § 1152.
[31] *Castro-Huerta*, 142 S. Ct. at 2518 (Gorsuch, N., dissenting).
[32] *Id.* at 2518-19 (Gorsuch, N., dissenting).
[33] *Id.* at 2520 (Gorsuch, N., dissenting).
[34] *Pollard v. Hagan*, 44 U.S. 212, 228-29 (1845).
[35] Enabling Acts are how Congress admits new states into the Union. 72 Am. Jur. States, Etc. § 16; U.S. Const. Art. IV § 3, cl. 1 ("New States may be admitted by the Congress into this Union.").
[36] *Castro-Huerta*, 142 S. Ct. at 2503 (internal quotation marks omitted) (emphasis added).
[37] 44 U.S. 212 (1845).
[38] 164 U.S. 240 (1896).
[39] 104 U.S. 621 (1882).
[40] 526 U.S. 172 (1999).

land, the Equal Footing Doctrine does not displace treaty rights absent "clear evidence of congressional intent to abrogate the [] [t]reaty rights."[41]

In 2019, the Court reiterated *Mille Lacs*'s holding in *Herrera v. Wyoming*.[42] *Herrera* formally overruled *Ward v. Race Horse*, where the Court held that the Equal Footing Doctrine displaces indigenous treaty rights upon statehood.[43] The holdings in *Race Horse* and *Castro-Huerta* are virtually indistinguishable. Despite this, *Castro-Huerta* simply acts as though *Mille Lacs* and *Herrera* are fictions of a jurisprudential imagination. It mentions neither case. Instead, it cherry-picks stare decisis by "assembl[ing] a string of carefully curated snippets—a clause here, a sentence there—" to craft a holding that deviates from "the galaxy of this Court's Indian law jurisprudence."[44]

Castro-Huerta's second flaw is its irreconciliation with the clear statement rule. To abrogate an indigenous treaty, Congress must do so with "clear" and "explicit" language.[45] This rule purposely imposes a high bar because "Indian treaty rights are too fundamental to be easily cast aside."[46] The rule requires Congress to speak clearly because "[a]lthough Congress has plenary authority over tribes, courts will not lightly assume that Congress in fact intends to undermine Indian self-government."[47]

Castro-Huerta now dictates that when a state enters the Union, Congress may only *save* a tribal treaty from abrogation through express statutory language. Pre-statehood treaty rights that are

[41] *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 202-03, 207-08 (1999).
[42] 139 S. Ct. 1686 (2019).
[43] *Id.* at 1697 (2019) ("To avoid any future confusion, we make clear today that *Race Horse* is repudiated to the extent it held that treaty rights can be impliedly extinguished at statehood.").
[44] *Castro-Huerta*, 142 S. Ct. at 2520 (Gorsuch, N., dissenting).
[45] *United States v. Dion*, 476 U.S. 734, 738-39 (1986). *See also Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 60 (1978) (the clear statement rule is articulated by the Supreme Court as "a proper respect both for tribal sovereignty itself and for the plenary authority of Congress . . . caution[ing] that we tread lightly in the absence of clear indications of legislative intent.").
[46] *Dion*, 476 U.S. at 739.
[47] *Michigan v. Bay Mills Indian Community*, 572 U.S. 2024, 2032 (2014).

"inconsistent" with a state's "inherent" sovereignty are abrogated unless expressly saved.[48] The old presumption of protection under the clear statement rule now yields to a presumption of abrogation. The Court flipped the clear statement rule on its head.

What's more, the Court misapplies its new clear statement rule. Herein lies *Castro-Huerta*'s third flaw. Under the Court's reconceptualized clear statement rule, treaty rights survive if Congress expressly saves them. Here, though, the Court ignores such language. The Oklahoma Enabling Act provides:

> **[N]othing contained** in the said constitution **shall be construed to limit or impair** the rights of person or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, **or other rights by treaties**, agreement, law, or otherwise, which it would have been competent to make if this act had never been passed.[49]

Under *Castro-Huerta*, the Equal Footing Doctrine displaces treaties *even if* Congress intends to save treaties. The Court claims this would not be the case if "the enabling act [said] otherwise *by express words*."[50] Paradoxically, the enabling act did exactly that. The Court conveniently renders Congress powerless to protect its own treaties through its own legislation.

Castro-Huerta is flawed for a fourth reason because it shows that certain Supreme Court justices only follow their purported jurisprudential methodology when it is convenient to do so. All five justices in the *Castro-Huerta* majority are self-proclaimed originalists or pragmatic originalists,[51]

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[48] *See Castro-Huerta*, 142 S. Ct. at 2503 ("As this Court has previously concluded, 'admission of a State into the Union' 'necessarily repeals the provisions of any prior statute, or of any existing treaty' that is inconsistent with the State's exercise of criminal jurisdiction 'throughout the whole of the territory within its limits,' including Indian country, unless the enabling act says otherwise 'by express words.'").
[49] Oklahoma Enabling Act, ch. 3335, 34 Stat. 267 (1906) (emphasis added).
[50] *Castro-Huerta*, 142 S. Ct. at 2503 (internal quotation marks omitted).
[51] Illan Wurman, *What is Originalism? Did it Underpin the Supreme Court's Ruling on Abortion and Guns? Debunking the Myths*, THE CONVERSATION (July 8, 2022, 8:17 AM), https://theconversation.com/what-is-originalism-did-it-underpin-the-supreme-courts-ruling-on-abortion-and-guns-debunking-the-myths-186440.

yet originalism was not invoked here. Had the *Castro-Huerta* majority conducted an originalist analysis, it would not have abrogated the foundational 1832 case *Worcester v. Georgia*.[52]

In *Worcester*, the Supreme Court held that states cannot impose regulations on Indian land because the federal government has the exclusive power to do so.[53] *Worcester* has been a crucially foundational federal Indian law case for 190 years.[54] Despite *Worcester*'s importance, the *Castro-Huerta* majority spends only one page abrogating it.[55] It cited six "grab bag"[56] cases to abrogate *Worcester*—"six decisions out of the galaxy of this Court's Indian law jurisprudence."[57] The Court did not have to *explain* why *Worcester* was abrogated or overruled, because conveniently, *Worcester* "was abandoned [] in the 1800s."[58]

The Court's biggest hypocrisy is *Castro-Huerta*'s placement among other 2021-2022 term cases like *Dobbs* and *Bruen* heralding original meaning and history.[59] The *Worcester* Court conducted an intensive historical analysis to reach its holding, yet *Castro-Huerta* ducks this analysis.[60] Perhaps the Court abandons originalism because here, as with much of federal Indian law, an originalist analysis is more likely to bolster tribal sovereignty instead of undermining it.[61]

ii. Tribal sovereignty after *Castro-Huerta*

[52] 31 U.S. (6 Pet.) 515 (1832).
[53] *Id.* at 591-92.
[54] 1 Cohen's Handbook of Federal Indian Law § 1.03. Justice Gorsuch's dissent in *Castro-Huerta* incorrectly characterizes *Worcester* as "over 200 years" old. *Castro-Huerta*, 142 S. Ct. at 2505 (Gorsuch, N., dissenting). *Worcester* was 190 years old when *Castro-Huerta* was decided.
[55] *Castro-Huerta*, 142 S. Ct. at 2493-94.
[56] *Id.* at 2520 (Gorsuch, N., dissenting).
[57] *Id.* (Gorsuch, N., dissenting). Within this "grab bag," the Court twice cited *dicta* of *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962), to undermine *Worcester*'s central holding. Dylan Hedden-Nicely, *The Reports of My Death Are Greatly Exaggerated: The Continued Vitality of Worcester v. Georgia*, 51 S.W. U. L. REV. 2 (forthcoming 2023) (manuscript at 3).
[58] *Castro-Huerta*, 142 S. Ct. at 2497.
[59] *E.g.*, *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022); *New York Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).
[60] *See Castro-Huerta*, 142 S. Ct. at 2505-07 (Gorsuch, N., dissenting).
[61] *See* Gregory Ablavsky, *Smashing Precedents and Making Up Facts*, STRICT SCRUTINY 18:36-18:50 (July 4, 2022) "…the great problem that originalists in federal Indian law face is that if you were truly originalist in federal Indian law, you support a robust vision of tribal sovereignty, and you support a [] very limited scope for state authority."

Where does tribal sovereignty stand after *Castro-Huerta*? This case may be a canary in a coal mine, warning tribes that the Supreme Court will no longer uphold any treaty rights. It may be a sign that the Supreme Court is endorsing states' full control over Native American tribes. It may be a sign that the Court will transfer Congress's plenary power over Indian affairs to the states.

Castro-Huerta functionally overruled *McGirt*. What is less clear is whether the Court fully abrogated *Worcester*. If *Worcester* is weakened, all aspects of tribal sovereignty are weakened. Three of the six "grab bag" cases *Castro-Huerta* cited to undermine *Worcester* were not about criminal jurisdiction. Rather, these cases centered around tort law[62] and civil jurisdiction.[63] This suggests that the Court's holding extends beyond criminal jurisdiction and could be interpreted in the future to modify civil jurisdiction in Indian Country. A cite to *Castro-Huerta* is another arrow in states' quiver of arguments against tribal sovereignty.

Alternatively, *Worcester* may be alive and well—only modified, not abrogated. Professor Dylan Hedden-Nicely argues that *Worcester*'s central holding remains intact. Hedden-Nicely argues that none of the "grab bag" cases used by *Castro-Huerta* were powerful enough to abrogate *Worcester* because the Court only used dicta when citing to each case—"stich[ing] together dicta built upon dicta."[64] He argues none of the "grab bag" cases contain broad enough holdings to displace a case as foundational as *Worcester*.[65] One these cases, *Williams v. Lee*, even reiterated *Worcester*'s central holding.[66] Thus, *Worcester*'s narrow authorization of state authority in Indian Country, and broad authorization of federal power in Indian Country, may still be valid in the wake of *Castro-Huerta*.

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[62] *Nevada v. Hicks*, 533 U. S. at 361 ("[T]he Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border.").
[63] *Surplus Trading Co. v. Cook*, 281 U.S. 647, 651 (1930); *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U. S. 251, 257–258 (1992) ("This Court's more recent cases have recognized the rights of States, absent a congressional prohibition, to exercise criminal (and, implicitly, civil) jurisdiction over non-Indians located on reservation lands.").
[64] *Id.* at 2.
[65] *See id.* For example, *Organized Village of Kake v. Egan* concerned incredibly unique circumstances and had a narrow holding. *Id.* at 4-5.
[66] *Id.* at 7-8.

The second way *Castro-Huerta* could undermine land reparations is by devaluing all pre-statehood treaty rights, including the physical borders of a tribe's territory or reservation. Despite the Court's contention that *Castro-Huerta* is limited to criminal jurisdiction,[67] the case's logical underpinnings may displace terrestrial treaty rights. The majority repeatedly stated that "Indian country is part of a *[s]tate's* territory,"[68] which undermines the Treaty of New Echota's language guaranteeing a "permanent home" for the Cherokee "without the *territorial* limits of the State sovereignties."[69] The Treaty broadly guaranteed that "the lands ceded to the Cherokee nation . . . shall, in no future time without their consent, be included within the *territorial* limits or *jurisdiction* of any State or Territory."[70] *Castro-Huerta* ignored this language.

The Court further provides ammunition to displace treaty land rights when it discusses how Indian Country is "necessarily" within—not separate from—Oklahoma's territorial boundaries.[71] "Oklahoma's territory includes Indian Country. In the early Republic, the Federal Government sometimes treated Indian Country as separate from state territory. But that view has long since been abandoned."[72] "Indian country is part of a [s]tate's territory."[73] And after "the *Worcester*-era understanding of Indian country as separate from the state was abandoned later in the 1800s,"[74] "Indian country in each [s]tate became part of that [s]tate's territory."[75] "To be clear, the Court today holds that Indian Country within a [s]tate's territory is part of a [s]tate, not separate from a [s]tate."[76]

[67] *Castro-Huerta*, 142 S. Ct. at 2503.
[68] *Id.* at 2494.
[69] Treaty with the Cherokee, Preamble, Dec. 29, 1835, 7 Stat. 478 (emphasis added).
[70] *Id.* Art. V (emphasis added).
[71] *Castro-Huerta*, 142 S. Ct. at 2503 (internal quotation marks omitted).
[72] *Id.* at 2489 (internal citations omitted).
[73] *Id.* at 2494.
[74] *Id.* at 2497.
[75] *Id.*
[76] *Id.* at 2504.

Third, *Castro-Huerta* may undermine land reparations if its holding is extended beyond Oklahoma. The treaties at issue in *Castro-Huerta* were signed in 1835 and 1866,[77] before Oklahoma joined the Union in 1907.[78] Other treaties are similarly situated. The United States signed some 368 treaties with tribes until it ceased treaty-making in 1871.[79] Since thirteen Western states entered the Union after 1871,[80] treaty land rights predating their respective states could be in jeopardy. For example, the Sioux Nation would be unable to recover a monetary damages award for the United States' taking of the Black Hills, land that was guaranteed to the Nation under the Fort Laramie Treaty of 1868.[81] Under *Castro-Huerta*'s logic, Montana's admission to the Union in 1889 would supersede all rights guaranteed under the Fort Laramie Treaty. Tribes in Washington, Wyoming, New Mexico, Idaho, Colorado, and other Western states now face uncertainty regarding the continued vitality of their treaties.

A fourth way *Castro-Huerta* may undermine land reparations will become clear if Congress passes legislation regarding tribal land reparations. Ingredients of *Castro-Huerta*'s holding could be used to extinguish Congress's plenary power over Native American affairs. *Castro-Huerta* granted states "*inherent* state prosecutorial authority in Indian Country."[82] The Court may extend this "inherent" authority to other topics in the future. Then, federal land reparations legislation could be either an unconstitutional encroachment into states' rights or an unconstitutional exercise of Congress's power.

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[77] Treaty with the Cherokee, Dec. 29, 1835, 7 Stat. 478; Treaty with the Cherokee, July 19, 1866, 14 Stat. 709.
[78] Samuel Shipley, *List of U.S. States' Dates of Admission to the Union*, ENCYCLOPEDIA BRITANNICA (Feb. 2020), https://www.britannica.com/topic/list-of-U-S-states-by-date-of-admission-to-the-Union-2130026.
[79] *Does the United States Still Make Treaties with Indian Tribes?*, U.S. DEP'T OF THE INTERIOR INDIAN AFF., https://www.bia.gov/faqs/does-united-states-still-make-treaties-indian-tribes (last visited Mar. 28, 2022); Sarah Pruitt, *Broken Treaties With Native American Tribes: Timeline*, HISTORY (Nov. 10, 2020), https://www.history.com/news/native-american-broken-treaties.
[80] *See* Shipley, *supra* note 79.
[81] *United States v. Sioux Nation of Indians*, 448 U.S. 371, 423-24 (1980).
[82] *Castro-Huerta*, 142 S. Ct. at 2499 (emphasis added).

The Court has limited Congress's plenary power before. In *Sioux Nation*, the Court narrowed Congress's plenary power by concluding that Congress was not entitled to deference with Fifth Amendment takings cases.[83] *Brackeen v. Haaland*, an case that will be decided in 2023, may use *Castro-Huerta* to take this limitation a step further.

In 2022, the Supreme Court granted certiorari to *Brackeen v. Haaland* to determine whether the Indian Child Welfare Act (ICWA) is unconstitutional.[84] Congress passed ICWA in 1978 to correct the crisis of Indian children being removed from their families and placed with non-Indian foster and adoptive homes.[85] Congress explicitly enacted ICWA under its Article I plenary power over Indian affairs, alluding to the Indian Commerce Clause as the source of this power.[86] One of the questions presented in *Brackeen* is whether ICWA exceeds Congress's Article I authority—specifically, whether the "arena of child placement" is in the "'virtually *exclusive* province of the States,'" not the federal government.[87] If the Court strikes down ICWA on these grounds, it would essentially seize Congress's power over Indian affairs and transfer this power to the states.

Castro-Huerta contains broad language with seemingly "no limiting principle, leading many to speculate as to its scope."[88] The case provides future courts with all the tools to slice a hole into Congress's plenary power. Perhaps the Court will use these tools in *Brackeen*. Only time will tell how expansively or narrowly the Supreme Court and lower federal courts will interpret *Castro-Huerta*.

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[83] *Sioux Nation*, 448 U.S. at 412-14 (1980). The Court stated that Congress's "'power to control and manage [is] not absolute . . . it [is] subject to limitations inhering in . . . a guardianship and to pertinent constitutional restrictions.'" *Id.*, quoting *United States v. Creek Nation*, 295 U.S. 103 at 109-110 (1935).
[84] *Brackeen v. Bernhardt*, No. 18-11479 (5th Cir. 2019), *Petition for Cert. Granted, Brackeen v. Haaland*, No. 21-380 (U.S. Feb. 28, 2022).
[85] 25 U.S.C. § 1901(4).
[86] § 1901(1).
[87] *Petition for Cert. Granted, Brackeen v. Haaland*, No. 21-380 (U.S. Feb. 28, 2022) (emphasis added).
[88] Hedden-Nicely, *supra* note 57.

Applicant Details

First Name	**Valentina**
Last Name	**Guerrero**
Citizenship Status	**U. S. Citizen**
Email Address	**valentina.guerrero@yale.edu**
Address	**Address** **Street** **8532 Summerville Place** **City** **Orlando** **State/Territory** **Florida** **Zip** **32819** **Country** **United States**
Contact Phone Number	**4078643373**

Applicant Education

BA/BS From	**Yale University**
Date of BA/BS	**May 2019**
JD/LLB From	**Yale Law School** **https://www.nalplawschools.org/content/OrganizationalSnapshots/OrgSnapshot_225.pdf**
Date of JD/LLB	**May 20, 2024**
Class Rank	**School does not rank**
Law Review/ Journal	**Yes**
Journal(s)	**Yale Law & Policy Review** **Yale Law Journal**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Rodriguez, Cristina
cristina.rodriguez@yale.edu
Chua, Amy
amy.chua@yale.edu
(203) 432-8715
Wishnie, Michael
michael.wishnie@yale.edu
_203_ 436-4780

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Valentina Guerrero

111 Park Street, Apartment 7R, New Haven, CT 06511 • valentina.guerrero@yale.edu • 407.864.3373

June 12, 2023

Hon. John Walker, Jr.
Senior Judge
U.S. Court of Appeals for the Second Circuit
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, Connecticut 06510-2100

Dear Judge Walker,

I am a rising third-year student at Yale Law School writing to apply for a clerkship in your chambers for the 2024-2025 term or any term thereafter. I am seeking a clerkship in New Haven because this city has been my home for nearly a decade. I plan to practice in the region upon graduation while my partner completes his pediatrics residency program at Yale-New Haven Hospital. It would be an honor to work for you during my clerkship year.

My resume, transcript, writing sample, and list of recommenders are enclosed. Professors Cristina Rodríguez, Michael Wishnie, and Amy Chua are also submitting letters of recommendation on my behalf. I welcome the opportunity to interview with you and sincerely look forward to hearing from you. Thank you for your consideration.

Sincerely,

Valentina Guerrero

Encls.

Valentina Guerrero

111 Park Street, Apartment 7R, New Haven, CT 06511 • valentina.guerrero@yale.edu • 407.864.3373

EDUCATION

Yale Law School New Haven, CT
J.D. Candidate Expected: May 2024
Activities: *Yale Law Journal*, Notes & Comments Editor (Vol. 133); Editor (Vol. 132)
Yale Law & Policy Review, Policy Editor (Vol. 41); Lead Editor (Vol. 40)
Latinx Law Student Association Board, Academics Chair
Ludwig Fellow in Public Sector Leadership
Research: Professor Cristina M. Rodríguez, *Leighton Homer Surbeck Professor of Law*
Professor Lea Brilmayer, *Howard M. Holtzmann Professor of Law*

Yale College New Haven, CT
B.A., *cum laude* with *distinction* in American Studies May 2019
Honors: Wrexham/Heinz Prize for best thesis in the Social Sciences; Roosevelt L. Thompson Prize for moral leadership in the public sphere; John C. Schroeder Award for altruism and social service; Commencement Marshal; Harry S. Truman Scholarship, 2018 National Finalist
Activities: Yale Domestic Policy Fellowship at the Institute for Social and Policy Studies
Yale Women in Government Fellowship with the Women's Campaign School at Yale Law
Head First-Year Counselor and Head College Aide to Pierson College
Thesis: *Returning Citizens: The Felon Disenfranchisement Clause in Florida Constitutional History, 1838-Present*

LEGAL EXPERIENCE

Latham & Watkins LLP, New York, NY Summer 2023
Summer Associate. Research and write on topics related to antitrust and internal investigations.

ACLU of Florida, Miami, FL January – April 2023
Law Clerk. Drafted a legal memorandum concerning First Amendment and equal protection claims to enjoin the Stop W.O.K.E. Act. Researched and drafted memoranda regarding claims and potential defendants in an investigation of book bans in K-12 schools across the state of Florida. Presented research findings and recommendations to the litigation team.

ACLU Democracy Project, Washington, D.C. January – April 2023
Legal Intern. Wrote a state legislation and policy tracker for 2023 voting bills in priority states. Wrote memoranda for the Senior Policy Counsel and Senior Campaign Strategist on state voting rights acts, unhoused voter protections, felony disenfranchisement, voter intimidation, and equity in early voting and drop box placement.

Quinn Emanuel Urquhart & Sullivan, LLP, Washington, D.C. & New York, NY Summer 2022
Summer Associate. Conducted legal research and managed exhibits during a live arbitration. Researched First Amendment freedom of association claims on behalf of a national non-profit. Presented winning cases in the firm's 2022 and 2021 Mock Trial Program. Former SEO Law Fellow in Summer 2021.

Worker and Immigrant Rights Advocacy Clinic, New Haven, CT January 2022 – Present
Student Co-Director; Law Student Intern. Drafted a successful Motion to Terminate and Letter of Prosecutorial Discretion, which ultimately led to the dismissal of a decade-long *crimmigration* matter. Filed Unfair Labor Practice charges on behalf of a group of service industry workers and counseled them through the NLRB process. Wrote bill language to secure fair wage and safety protections for gig workers in collaboration with union stakeholders and members of the Connecticut General Assembly. Previously Co-Chaired the Yale Law Clinical Student Board.

Legal Aid Society, New York, NY July 2020 – May 2021
Paralegal Casehandler. Advocated for clients in non-payment eviction proceedings during the coronavirus pandemic. Researched and presented findings on developing eviction moratoria. Directed intake for two-hundred tenants transitioning from public to private housing.

Office of the Federal Public Defender, New Haven, CT October 2019 – June 2020
Mitigation Assistant. Conducted social science research and interviewed clients in prisons and treatment facilities. Drafted memoranda on mitigating factors for cases before the U.S. District Court for the District of Connecticut and U.S. Court of Appeals for the Second Circuit. Analyzed medical documentation for compassionate release under the Second Chances Act.

Yale Office of the Vice President and Office of General Counsel, New Haven, CT July 2019 – April 2020
Fellow. Researched and aided university governance through correspondence, grant, and briefing management. Developed a policy initiative that now serves as Yale University's diversity, equity and inclusion framework.

Florida Rights Restoration Coalition, Orlando, FL Summer 2018
Policy Intern. Researched and wrote reports on statewide efforts to restore voting rights for individuals with prior felony convictions. Support provided by the Yale Institute for Social and Policy Studies.

United States Department of Labor – Civil Rights Center, Washington, D.C. Summer 2017
Policy Intern. Conducted research and wrote white papers on national origin discrimination, discrimination based on language proficiency, and equal pay policy. Organized a lunch series on gender-affirming policies in the workplace. Support provided by the Yale Women in Government Fellowship.

SKILLS & INTERESTS
Fluent in written and spoken Spanish; hiking in national parks, spending time by the water, gathering friends and family.

YALE LAW SCHOOL
Office of the Registrar

TRANSCRIPT RECORD

YALE UNIVERSITY

Date Issued: 28

Record of: Valentina N Guerrero Page: 1
Issued To: Valentina Guerrero
Parchment DocumentID: TWBUCQDM

Date Entered: Fall 2021

Candidate for : Juris Doctor MAY-2024

SUBJ	NO.	COURSE TITLE	UNITS	GRD	INSTRUCTOR
Fall 2021					
LAW	10001	Constitutional Law I:Section A	4.00	CR	J. Driver
LAW	11001	Contracts I: Group 2	4.00	CR	L. Brilmayer
LAW	12001	Procedure I: Section B	4.00	CR	J. Suk
LAW	14001	Criminal Law & Admin I: Sect C	4.00	CR	J. Whitman
		Term Units 16.00	Cum Units 16.00		
Spring 2022					
LAW	21027	Advanced Legal Research	2.00	H	J. Nann
LAW	21175	Local Government Law	4.00	P	D. Schleicher
LAW	21227	Legislation	3.00	P	A. Gluck
LAW	30127	Worker&ImmigrantRightsClinic	2.00	H	M. Ahmad, C. Flores, S. Zampierin, M. Wishnie
LAW	30128	Worker&ImmigrantRts:Fieldwork	2.00	H	M. Ahmad, M. Wishnie, C. Flores, S. Zampierin, M. Orihuela
LAW	40014	SupervisedResearchRA Work	2.00	CR	L. Brilmayer
		Term Units 15.00	Cum Units 31.00		
Sup. ResearchRA: Full Faith and Credit Clause in Reproductive Rights.					
Fall 2022					
LAW	20219	Business Organizations	4.00	P	J. Macey
LAW	20530	Advanced Contracts: Seminar	2.00	H	A. Chua
Substantial Paper					
LAW	20557	Torts and Regulation	3.00	H	D. Kysar
LAW	30127	Worker&ImmigrantRightsClinic	2.00	H	M. Ahmad, K. Tyrrell
LAW	30128	Worker&ImmigrantRts:Fieldwork	2.00	H	M. Ahmad, K. Tyrrell
LAW	40014	SupervisedResearchRA Work	2.00	CR	C. Rodriguez
		Term Units 15.00	Cum Units 46.00		
Sup. ResearchRA: Federal Court Reform, Immigration Law, and Democracy.					
Spring 2023					
LAW	21048	Administrative Law	4.00	H	C. Rodriguez
LAW	21050	Federal Income Taxation	4.00	H	A. Alstott
LAW	30130	Advanced WIRAC Fieldwork	2.00	H	M. Ahmad, K. Tumlin, M. Wishnie, K. Tyrrell
LAW	40014	SupervisedResearchRA Work	1.00	CR	C. Rodriguez
LAW	50100	RdgGrp:Publ. Sector Leadership	1.00	CR	C. Rodriguez
		Term Units 12.00	Cum Units 58.00		
Sup. ResearchRA: Administrative Constitutionalism.					

********** END OF TRANSCRIPT **********

LEG. SCHOL. YALENS. NOVPORT. ANN. DOM. MDCCCXXIV. CONDIT.

HEATHER ABBOTT, REGISTRAR

Official transcript only if registrar's signature, embossed university seal and date are affixed.

YALE LAW SCHOOL
P.O. Box 208215
New Haven, CT 06520

EXPLANATION OF GRADING SYSTEM

Beginning September 2015 to date

HONORS	Performance in the course demonstrates superior mastery of the subject.
PASS	Successful performance in the course.
LOW **P**ASS	Performance in the course is below the level that on average is required for the award of a degree.
CREDIT	The course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses are offered only on a credit-fail basis.
FAILURE	No credit is given for the course.
CRG	Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement.
RC	Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union.
T	Ungraded transfer credit for work done at another law school.
TG	Transfer credit for work completed at another law school; counts toward graded unit requirement.
EXT	In-progress work for which an extension has been approved.
INC	Late work for which no extension has been approved.
NCR	No credit given because of late withdrawal from course or other reason noted in term comments.

Our current grading system does not allow the computation of grade point averages. Individual class rank is not computed. There is no required curve for grades in Yale Law School classes.

Classes matriculating September 1968 through September 1986 must have successfully completed 81 semester hours of credit for the J.D. (Juris Doctor) degree. Classes matriculating September 1987 through September 2004 must have successfully completed 82 credits for the J.D. degree. Classes matriculating September 2005 to date must have successfully completed 83 credits for the J.D. degree. A student must have completed 24 semester hours for the LL.M. (Master of Laws) degree and 27 semester hours for the M.S.L. (Master of Studies in Law) degree. The J.S.D. (Doctor of the Science of Law) degree is awarded upon approval of a thesis that is a substantial contribution to legal scholarship.

For Classes Matriculating 1843 through September 1950

80 through 100 = Excellent
73 through 79 = Good
65 through 72 = Satisfactory
55 through 64 = Lowest passing grade
0 through 54 = Failure

To graduate, a student must have attained a weighted grade of at least 65.

For Classes Matriculating September 1951 through September 1955

E = Excellent
G = Good
S = Satisfactory
F = Failure

To graduate, a student must have attained a weighted grade of at least Satisfactory.

For Classes Matriculating September 1956 through September 1958

A = Excellent
B = Superior
C = Satisfactory
D = Lowest passing grade
F = Failure

To graduate, a student must have attained a weighted grade of at least D.

From September 1959 through June 1968

A = Excellent
B+
B = Degrees of Superior
C+
C = Degrees of Satisfactory
C-
D = Lowest passing grade
F = Failure

To graduate a student must have attained a weighted grade of at least D.

From September 1968 through June 2015

H = Work done in this course is significantly superior to the average level of performance in the School.
P = Successful performance of the work in the course.
LP = Work done in the course is below the level of performance which on the average is required for the award of a degree.

CR = Grade which indicates that the course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses offered only on a credit-fail basis.
F = No credit is given for the course.

RC = Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union.
EXT = In-progress work for which an extension has been approved.
INC = Late work for which no extension has been approved.
NCR = No credit given for late withdrawal from course or for reasons noted in term comments.

CRG = Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement.
T = Ungraded transfer credit for work done at another law school.
TG = Transfer credit for work completed at another law school; counts toward graded unit requirement.
*Provisional grade.

YALE UNIVERSITY

Student No: 914993864 Date Issued: 08-DEC-2020

Record of: Valentina Guerrero Page: 1
Issued To: Valentina Guerrero
Parchment DocumentID: 31640339

College : Yale College PC 19
Major : American Studies (Int.)

Events: Distinction in Major 1
CUM LAUDE

Degree(s) Awarded :
Bachelor of Arts 20-MAY-2019

SUBJ	NO.	COURSE TITLE	CRED	GRD
TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:				
Summer 2018		University Of Cambridge		
**** **		Total Credits	2.00	TR
INTL STUDY		Crime & Criminal Justice	0.00	TR
INTL STUDY		Sustainability	0.00	TR
Fall 2015				
CHEM	134L	General Chemistry Laboratory I	0.50	A-
CHEM	161	General Chemistry I	1.00	B+
HLTH	230	GlobalHealthChallengs&Response	1.00	A
PSYC	110	Introduction to Psychology	1.00	B
Spring 2016				
BIOL	101	Biochemistry and Biophysics	0.50	B+
BIOL	102	Cell Bio & Membrane Physiology	0.50	A-
CHEM	136L	GeneralChemistry Laboratory II	0.50	B+
CHEM	165	General Chemistry II	1.00	A-
ENGL	114	On Being Real	1.00	A
MATH	112	CalcOfFunctionsOfOneVariable I	1.00	B
Fall 2016				
ER&M	200	IntroToEthnicityRace&Migration	1.00	A
ER&M	226	Race,Class,GenderAmerCities	1.00	A
ER&M	326	Environmental Inequalities	1.00	A
PLSC	143	Internatl Challenges of 21st C	1.00	A
Spring 2017				
AMST	284	Introductn to Latino/a Studies	1.00	A
ER&M	392	U.S. Urban History 1870-Pres	1.00	A
PLSC	214	Politics of U.S. Public Policy	1.00	A-
SPAN	246	Intro to the Cultures of Spain	1.00	A
Fall 2017				
AMST	125	The Long Civil Rights Movement	1.00	A
AMST	198	New Haven & the American City	1.00	A
AMST	324	Race, Politics, and Law	1.00	A
LAST	222	Legal Spanish	1.00	A
PLSC	233	Constitutional Law	1.00	CR

********** CONTINUED ON NEXT COLUMN **********

SUBJ	NO.	COURSE TITLE	CRED	GRD
Institution Information continued:				
Spring 2018				
ENGL	127	American Literature	1.00	A-
PLSC	211	U.S. Social Policy &Inequality	1.00	A
PLSC	257	Bioethics and Law	1.00	A
PLSC	276	Wrongful Convictions	1.00	A
PSYC	157	Psychology and the Good Life	1.00	A
Fall 2018				
AMST	493	SeniorProject: IntensiveMajor	1.00	A
HIST	280	Catholic IntellectualTradition	1.00	A
PLSC	274	MakingPublicChoices inNewHaven	1.00	A-
PSYC	141	The Criminal Mind	1.00	CR
Spring 2019				
AMST	494	SeniorProject: IntensiveMajor	1.00	A
HIST	119	CivilWar&Reconstruction1845-77	1.00	A
HUMS	411	Life Worth Living	1.00	A
PLSC	254	Politicl Parties in AmerSystem	1.00	CR

**********UNDERGRADUATE DEGREE GPA 3.84 **********

Cumulative GPA: 3.84

********** END OF TRANSCRIPT **********

This transcript is printed over a reproduction, in blue ink, of *A Front View of Yale-College*, from a woodcut printed by Daniel Bowen in 1786. The building on the right survives as Connecticut Hall, on Yale's Old Campus.

Emily Shandley, University Registrar

Yale University

OFFICE OF THE UNIVERSITY REGISTRAR • POST OFFICE BOX 208321 • NEW HAVEN, CONNECTICUT 06520-8321 • (203) 432-2330

Yale College is the undergraduate division of Yale University, and this document is a transcript of the student's undergraduate record at Yale. Yale University is accredited by the New England Association of Schools and Colleges. Federal law prohibits release of information from this transcript to a third party without the express written consent of the student.

REQUIREMENTS FOR THE BACHELOR'S DEGREE

For the class of 1970 and subsequent classes, a student must successfully complete at least 36 semester courses or their equivalent in Yale College to qualify for the degree of Bachelor of Arts (B.A.) or Bachelor of Science (B.S.). *Semester credit hours only appear on the transcript for the convenience of other institutions.* The student must also fulfill the Distributional Requirements, including the Foreign Language Requirement (beginning with students entering in Fall 1983), and complete the requirements of a major program, including a departmental examination or its equivalent, such as a senior essay. Some programs offer an intensive major as well as a standard major. A student may normally complete no more than eight terms of enrollment in order to fulfill these requirements.

For the Class of 1969, at least 38 semester courses or their equivalent must have been satisfactorily completed for the Bachelor's degree in the standard major.

For the Classes of 1934 to 1968, at least 40 semester courses or their equivalent must have been satisfactorily completed for the Bachelor's degree in the standard major.

For the Classes of 1927 to 1933, at least 120 semester hours were required for graduation.

For the Classes of 1926 and prior classes, 60 year hours were required for graduation.

Students who enter Yale College with advanced preparation may be awarded credit in those subjects at the conclusion of the freshman year (college credit for students who entered prior to September 1975; acceleration credit for students who entered subsequently). Such credit may be counted toward the requirements for graduation if the student accelerates - that is, if the student concludes his or her studies in fewer than eight semesters.

A limited number of students enroll as Eli Whitney Students, usually completing degree requirements on a part-time basis over a period not exceeding seven years. Such enrollment may lead to the Bachelor of Arts or Bachelor of Science degree. Until 2004, the Eli Whitney Students program was called the Degree Special Students program and could alternatively lead to the Bachelor of Liberal Studies (B.L.S.) degree.

SUMMER SESSION

From 1975 through 1978, Yale College offered a summer term, the equivalent of a regular fall or spring term. Students could participate in a summer term as *regular* enrollment if the term was intended to be one of eight terms of attendance, or as *supplementary* enrollment if the term was not to be one of the eight required terms. Part-time participation in a summer term was permitted under supplementary enrollment.

Yale Summer Programs (1979 to 2004) / Yale Summer Session (2005-present) is currently an independent division of Yale University. In both content and method, most summer courses are identical to courses offered in Yale College during the regular academic year. Summer courses are, however, smaller in size and are both more concentrated and intensive than courses offered during the regular fall and spring semesters. Summer courses are taught by regular faculty of Yale University, by visiting professors who receive temporary appointments at Yale, and by Yale graduate students. Summer courses are approved by the Yale College faculty for credit toward the bachelor's degree.

NUMBERING OF COURSES

Beginning in 1977-78, undergraduate courses are numbered from 100 to 499. Course numbers do not necessarily correlate with course level. Courses taken in the Yale Graduate School of Arts and Sciences are numbered from 500 to 999. Courses offered through the various Yale professional schools are numbered according to the systems of those respective schools.

Before 1977-78, courses numbered from 10 to 19 were, in general, elementary or first-year courses. Second-year or intermediate courses were numbered from 20 to 29. Third-year and advanced courses were numbered from 30 to 99. Courses numbered 100 and above were offered through the Graduate School of Arts and Sciences.

Year-long courses may appear with identical abbreviated titles for the two terms in which the courses were taken. In some year-long courses, failure to complete the second term results in no credit for either term.

The following may also appear in combination with course numbers:

a	Fall term course	E	Online course
b	Spring term course	S	Yale Summer Session
C	Summer term course	J	Junior seminar
1 or lb	Laboratory course		

COURSE CREDIT EQUIVALENT

One (1) Yale College course credit equates to four (4) semester hours.

COURSE TITLES AND DESCRIPTIONS

Full course titles and course descriptions are provided in the *Yale College Programs of Study* bulletin. Upon request to the Registrar, copies of relevant pages will be furnished at a cost of $.50 per page.

GRADING SYSTEMS

Yale calculates grade point averages for students enrolled in the Fall 2005 term and subsequent terms. Starred grades (*) do not count toward GPA. Yale does not calculate class rank. The College currently operates on a semester system.

Fall 2014 through the present:

A, A- Excellent B+, B, B- Good C+, C, C- Satisfactory
D+, D, D- Passing P Pass F Fail
CR Credit (see below*)
W Withdrew (without prejudice after midterm) TR Transfer Credit

Fall 2009 through Summer 2014:

A, A- Excellent B+, B, B- Good C+, C, C- Satisfactory
D+, D, D- Passing F Fail CR Credit (see below*)
W Withdrew (without prejudice after midterm) TR Transfer Credit

Summer 1981 through Spring 2009:

A, A- Excellent B+, B, B- Good C+, C, C- Satisfactory
D+, D, D- Passing F Fail CR Credit (see below*)
W Withdrew (without prejudice after midterm)

Fall 1972 through Spring 1981:

A Excellent B Very Good C Satisfactory D Passing
F Fail CR Credit (see below*)
W Withdrew (without prejudice after midterm)

Fall 1967 through Spring 1972:

H Honors HP High Pass P Pass F Fail
INP Incomplete W Withdrew (in good standing)
WF Withdrew (failing)

Fall 1932 through Spring 1966:

A 100-point numerical grading system was used at Yale College during this period with the following demarcations:
90-100 A 80-89 B 70-79 C 60-69 D (passing) 50-59 F

Prior to Fall 1932:

A 400-point numerical grading system was used at Yale College with the following equivalencies established between the 100-point and the 400-point scales:
400 = 100 375 = 95 350 = 90 325 = 85 300 = 80 275 = 75 250 = 70
225 = 65 200 = 60 (passing)

The following marks may appear on some transcripts:

ABP	Absent from final examination
ABX	Authorized postponement of a final examination
INC or TI	Authorized late submission of work
NM or #	No grade recorded
NS	Unsatisfactory completion of work to date
SAT	Satisfactory completion of work to date
UNC	Unauthorized late submission of work

Beginning with Fall 1976, the transcript shows all courses in which the student was enrolled at midterm.

From Fall 1972 through Summer 1976, the transcript was a record only of courses successfully completed.

The grades of A, A-, B+, B, B-, C+, C, C-, D+, D, D-, CR, TR, H, HP, and P equally contribute course credit toward graduation requirements.

* *From Fall 1975 through Spring 1993*, students could elect a limited number of courses on the Credit/Fail option; passing grades were converted to CR.

* *Beginning with Fall 1993*, only grades of C- and above in courses elected on the Credit/D/Fail option were converted to CR.

OFFICIAL RECORD

A transcript without the signature of the University Registrar is to be considered only as a statement of the student's academic progress toward the degree and is not to be considered as an official document.

June 02, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write to recommend Valentina Guerrero for a clerkship in your chambers beginning in summer or fall of 2024 or thereafter. Valentina is a highly intelligent, motivated, and hard-working student who I am confident will contribute greatly to the public good and the legal profession. I recommend her strongly and without reservation and am certain she would excel as a clerk.

I have come to know Valentina well through her work as my research assistant over the last year, and through her stellar performance in my Administrative Law course this past spring. Valentina has done excellent work as my RA. She has been diligent, responsive, resourceful, and comprehensive. I have tasked her with providing detailed and synthetic accounts of various academic literatures relevant to my research, and she has produced astute and highly useful memos that will serve as touchstones for my own writing for years to come. Her research has ranged from executive-branch lawyering, to the processes governing enforcement discretion in federal law enforcement, to attempts by administrative agencies to give effect to constitutional requirements and values.

In each case, Valentina has proved to be adept at finding and interpreting government documents, digesting theoretical literature, identifying the limits of judicial review, and specifying the factors that empower and limit agency action. Though I do not ask my research assistants to write polished memos, each of hers has been extremely well organized and effective at presenting her key findings and then supporting those findings with the right level of detail and citation. She has been resourceful in finding obscure sources, as well as in ensuring comprehensive coverage, all on her own initiative. She meets deadlines without fail and willingly accepts and dives into assignments.

Valentina's performance in my Administrative Law course was also extremely impressive. She earned a grade of "Honors" on the blind-graded final exam, proving to be adept at intricate issue spotting, as well as at situating doctrinal developments within larger historical and theoretical currents. I was enormously pleased to see her analytical excellence under time pressure, as she was outstanding during class discussion. She often showed courage, venturing answers to difficult questions when other students seemed hesitant, including in deciphering the complex statutory and regulatory schemes that underpin many administrative law cases. Unlike many students, her observations consisted not just of her personal and possibly pre-existing opinions, but also of genuine attempts to understand familiar problems of governance and policy in new terms. Her bent is analytical and open-minded, and her affect is gregarious, confident, and engaged.

Valentina clearly also commands the respect of her peers and invests in her community. She has been trusted with several leadership positions at the law school. Some colleagues and I selected her to be part of an inaugural class of public sector leadership fellows, based on her track record of public service and sincere interest and commitment to government. Within that fellows' community, she has been a critical presence, deeply engaging in all of the events and workshops. She thinks critically about how best to spend her time, incorporates service to others naturally, and enlivens every room she is in. I am confident she would be a welcome and trustworthy presence in chambers. I am happy to speak about Valentina whenever it might be helpful and can be reached at cristina.rodriguez@yale.edu or 347-907-1626.

Best regards,

Cristina Rodriguez
Leighton Homer Surbeck Professor of Law
Yale Law School

June 07, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I understand that Valentina Guerrero is applying to your chambers for a judicial clerkship. Valentina is a delightful, exceptionally smart, phenomenally hardworking young woman, and I am writing to give her my highest recommendation.

By way of brief background, Valentina is a first-generation American and first-generation college student, whose family immigrated to the United States from Ecuador a few years before she was born. Valentina was raised by a single father and her elderly grandparents in Florida, and she has two siblings with special needs. Despite these early obstacles and the disproportionate responsibility she often had to bear, Valentina has always maintained a sunny, can-do attitude and repeatedly risen to the top even while devoting herself to the larger community. She was the first student from her high school to be admitted to Yale College, where she wrote Yale's top thesis in the Social Sciences and then went on to graduate as Class Marshal and the winner of two public service awards, the John C. Schroeder Award and the Roosevelt L. Thompson Prize, both recognizing students for their altruism, compassion, and social service.

I got to know Valentina quite well last fall when she was one of about 60 students in my Advanced Contracts class. Every week, students were required to submit reaction papers based on the assigned readings, which ranged from judicial opinions to actual contracts to articles written from law-and-economics, libertarian, critical theory, and other normative perspectives. I found Valentina extremely impressive and a delight to teach. She's incredibly bright with razor-sharp analytical skills, but she's also unusually thoughtful and empathetic with an ability to see the larger importance of things. Valentina's weekly reaction papers were consistently top-notch – incisive, probing, lucidly written, and often going above and beyond (for example, providing extensive supportive citations or relevant empirical studies). Her final paper, which counted for 30% of her grade, was outstanding, and she received an Honors as her grade.

Valentina's impressive performance in my class is part of a larger pattern. She's received Honors in some of our largest and most difficult black letter classes, including Torts, Federal Income Taxation, and Administrative Law. She's also a beautiful writer, who constantly tries to hone her legal writing skills with simultaneously helping others fine-tune theirs. As a notes editor on the *Yale Law Journal*, she dedicates her time to reading, analyzing, editing, and providing feedback on student scholarship. As an advanced clinical student in the Worker and Immigrant Rights Advocacy Clinic (WIRAC), Valentina has developed strong memo-, brief-writing, and oral advocacy skills on issues ranging from prosecutorial discretion to administrative law and was recently selected to be Co-Director of WIRAC.

Valentina has impressed outside the classroom too. Here's what her supervisor last summer at the ACLU, Xavier Persad, wrote about her:

> Valentina is undoubtedly the most exceptional intern I've had the pleasure of supervising. Her passion, dedication, and legal acuity are impossible to miss. I trusted Valentina with all of our most important and impactful legal research and writing assignments. In my experience, it is incredibly rare to find legal talent like Valentina — her work ethic, analytical skills, and work product rise far above her colleagues. She was an absolute joy to work with, and our team is simply not the same without her.

Similarly, here's what her supervising attorney at Quinn Emmanuel, Alex Loomis, wrote about her (emphasis added):

> I first met Valentina when she was a "Zero-L" summer associate at Quinn Emanuel the summer before she started law school. My first assignment for Valentina was, in retrospect, a little rough: I asked her to figure out if there was any way we could seek an interlocutory appeal or mandamus relief of a denial of motion for summary judgment on res judicata grounds in Texas state court. (Texas has strange interlocutory appellate procedures, so this was not an obvious question.). In my experience, this was the kind of assignment that generally would have been too much to throw at a summer associate who's already had a couple of years of legal training. Valentina was different. She listened patiently while we had our first "research call" where she got a primer on basics of appellate procedure and claim/issue preclusion. She took it all in, asked great questions to clarify everything, and proceeded over the next few weeks to get me the most exhaustive research I've ever received from a summer associate on this niche, but for us, extremely important topic. Her emails summarizing the research were extremely clear, in a "I can copy and paste this to send to a partner" kind of way. **But what mostly stood out – apart from someone who hadn't gone to law school yet figuring out what mandamus and claim preclusion was after a day – was that she caught issues during her research that I hadn't thought of, flagging that there were certain types of special motions in Texas state court that one could bring that might affect appellate rights, despite me never flagging this. That skill is very rare for summer associates – and it's obviously very important for a law clerk, especially given that lawyers don't always fully catch legal issues their cases involve – and Valentina demonstrated it before going to law school.** As part of her research, she figured out that our local counsel had made a strategic error in the type of motions we brought, which informed our strategy going forward. . . .

I continued to rely on Valentina for the rest of the summer . . . because **I thought she was providing better work product than**

the other summer associates who had two years of law school. . . She's eager to learn, has a great attitude, and, critically, is brilliant and a fantastic lawyer.

Like Mr. Loomis, I think very highly of Valentina, and believe she would make a first-rate judicial clerk. I very much hope you will consider interviewing her; I don't think you'll be disappointed. Please do not hesitate to contact me by email (amy.chua@yale.edu) or on my cell phone (203-668-6682) if you have any questions. I would welcome the opportunity to be helpful in any way.

Thank you very much for your time and attention.

Sincerely yours,

Amy Chua
John M. Duff, Jr. Professor of Law
Yale Law School
amy.chua@yale.edu
(203) 432-8715

June 12, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write in enthusiastic support of the application of Valentina Guerrero, a rising third-year student at Yale Law School, for a clerkship in your chambers. Valentina earned her B.A. cum laude with distinction in American Studies at Yale College, where she won several awards, perhaps most notably the Roosevelt Thompson Prize for public service and moral leadership. She spent two years in indigent defense and legal services offices, then entered Yale Law School. At Yale, Valentina is Notes and Comments Editor on the Yale Law Journal, Policy Editor on the Yale Law & Policy Review, an RA to two professors, leader of several student organizations, and a star student in a demanding clinic. Most importantly, Valentina is extremely smart, disciplined, and kind, a natural leader with a warm sense of humor and powerful analytic abilities. I am delighted to recommend her to you with great enthusiasm.

Valentina has been a student for three semesters in the Worker & Immigrant Rights Advocacy Clinic, and we just selected her as a Student Director for the coming year. In one matter, Valentina represented Connecticut Drivers United (CDU), an organization of Uber and Lyft rideshare and delivery drivers who have sought to secure labor protections via state legislation, while also resisting pro-corporation legislation sponsored by the companies and their local proxies. Valentina did extremely good and careful work analyzing legislation around the country; evaluating bills advanced by Uber and Lyft in recent sessions in Hartford, often through a proxy organization that has all the hallmarks of a company union; and researching difficult issues of federal and state labor, employment, and anti-trust law. She spoke at length with the lead organizers for drivers in other states and the handful of economists and legal academics working on these topics. She also met frequently with the leadership and members of CDU and helped to negotiate with the companies' proxy organization. Based on this extensive research, Valentina helped defeat bad legislation in the 2022 session and to draft a narrower bill for the 2023 session. See S.B. 1180, An Act Concerning Rideshare and Delivery Driver Minimum Standards (2023), which has passed the State Senate and is poised for approval by the State House as I write this. See also Emilia Otte, Drivers Gather at the Capitol to Support Wage Minimums for Uber, DoorDash and Other Services, CT Examiner (Mar. 9, 2023). Guiding her clients through the difficult legal and political challenges, including the specific difficulty of an Uber-funded company union with ready access to media and elected officials, tested Valentina – and she met that challenge with exquisite skill. Her research is sharp, and her discretion and judgment even sharper.

In a second matter, Valentina and different teammates represented four former workers from a McDonalds restaurant who experienced a range of mistreatment during their employment, including retaliatory firings for reporting suspicious and abusive conduct by managers. Valentina conducted individual intakes for these workers, researched potential claims, and ultimately helped them to file Unfair Labor Practice (ULP) complaints against the franchise operator with the National Labor Relations Board (Board). Through the winter and into the spring, Valentina prepared her clients to give statements to the Board, completed numerous research memos on topics from Board procedures to available remedies, and eventually negotiated a very favorable settlement, which the clients will announce at a press conference later this month. It was a tour de force performance by Valentina.

Finally, Valentina handled one other matter which I did not directly supervise, involving the endgame of a longstanding removal defense case, in which she represented a lawful permanent resident facing deportation to Jamaica based on a series of criminal convictions. After years of litigation and appeals, ICE agreed to drop the case. I understand that Valentina's work on this matter was superb as well.

Valentina is wonderful. She is brilliant, thoughtful, and kind, with an uncommon maturity. She can complete enormous amounts of work with swiftness and care. She is adored by her clients, classmates, and supervisors. We selected her to serve as a Student Director in the clinic because her extraordinary intellect is combined with strong values and personal qualities. She will be an outstanding law clerk.

Sincerely,

/s/ Michael J. Wishnie

Michael J. Wishnie

Michael Wishnie - michael.wishnie@yale.edu - _203_ 436-4780

WRITING SAMPLE

Valentina Guerrero
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(407) 864-3373

I drafted this writing sample for my Contracts seminar. The assignment was to draft an appellate brief supporting an appeal from a case decided by the U.S. District Court for the Southern District of New York in 2018. My brief supports the defendant-appellant, FLSmidth ("FLS"), an internationally established mining systems provider. All material presented here is my own work product.

No. 21-1643

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

HOLLAND LOADER COMPANY, LLC,

Plaintiff-Appellee,

v.

FLSMIDTH A/S,

Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of New York

BRIEF FOR DEFENDANT-APPELLANT

Valentina Guerrero
YALE LAW SCHOOL
127 Wall Street
New Haven, CT 06511
Telephone: (407) 864-3373

Counsel for Defendant-Appellant

PARTIES TO THE PROCEEDING

FLSMIDTH A/S,
Defendant below and appellant herein.

HOLLAND LOADER COMPANY, LLC,
Plaintiff below and appellee herein.

QUESTIONS PRESENTED

I. Whether the District Court should have incorporated FLSmidth's evidence of what constitutes "commercially reasonable efforts" in FLSmidth's industry when assessing the company's performance under its contract with Holland Loader Company.

II. Whether FLSmidth's decision to allocate resources away from a non-performing product line during a global economic downturn violated the standard for "commercially reasonable efforts."

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The United States District Court for the Southern District of New York's opinion is reported at 313 F. Supp. 3d 447 (S.D.N.Y. 2018).

STATEMENT OF JURISDICTION

The District Court entered judgment on May 2, 2018. Appellants timely filed an appeal. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF FACTS

My brief supports the defendant-appellant, FLSmidth & Co. A/S ("FLSmidth" or "FLS"), an internationally established mining systems provider. This case is on appeal in the Second Circuit after judgment was entered on behalf of Holland Loader Company, LLC ("Holland Loader" or "HLC"), a mining equipment producer, in the U.S. District Court for the Southern District of New York in 2018.

Holland Loader is a company that produces equipment used in bulk-materials handling for engineering and surface mining projects. *Holland Loader Co., LLC v. FLSmidth A/S,* 313 F. Supp. 3d 447, 453 (S.D.N.Y. 2018). Steven Svatek, a mining engineer and president of Holland Loader, initially "struggle[ed] to build the business of his company." *Id.* at 452. Holland Loader's promotional and sales capacity were inadequate by industry standards. *Id.* at 454. The company was unable to offer customers the substantial financial and commercial guarantees its market demanded. *See id.* at 454.

In May 2012, Holland Loader sold its intellectual property rights to FLSmidth, an internationally established mining systems provider. *Id.* at 453. FLS specializes in offering customized complex systems, not in selling individual stand-alone products. *Id.* at 465. Unlike standardized and mass-produced product sales, systems sales in the minerals and mining market

are generally based on proposals consisting of a budgetary quote and general concept drawings. *Id.* at 457. As such, FLS customers generally do not expect detailed drawings or specifications of products. *Id.* These details are only expected months after the actual purchase is made. *Id.* Pre-sale fabrication is not the norm. Rather, solution and product development is later made specific to the customer's project needs. Before identifying a customer's specific needs, FLS would only perform conceptual design work on a product. *Id.* at 465.

At the time FLS acquired Holland Loader's intellectual property, most of Holland Loader's product designs were delivered in hard copy and did not conform with FLS's design and safety standards. *Id.* at 456. FLS proceeded to draft a functional description and design-requirement proposal for HLC's bidirectional loader, a process colloquially known as "FLS-izing," so the loader could be offered for sale. *Id.* at 466. FLS also updated promotional materials related to HLC products, including HLC's website, after its acquisition. *Id.* at 458.

As part of their intellectual property agreement, FLS hired Steven Svatek. *Id.* at 455. Svatek was the most knowledgeable person about Holland Loader products and, as an FLS employee, was retained in part to promote and further develop Holland Loader's assets. *Id.* at 456. FLS also hired Tim Tash as HLC's dedicated product manager to coordinate, oversee, and support the engineering and sales efforts of Holland Loader products. *Id.* at 456-57. No other product line across FLS's more than fifty subsidiary companies worldwide benefited from an exclusively dedicated product manager like Tim Tash. *Id.* at 474. FLS's hiring of Svatek and Tash, two individuals with the most knowledge of Holland Loader, was a "benefit which the other product lines did not enjoy" and serves as an example of FLS's special efforts toward the HLC product line. *Id.*

HLC's agreement with FLS also included a "commercially reasonable efforts" provision. *Id.* at 456. That provision, found at Section 6.1(b) of the IP Agreement provided that "[d]uring the

Earnout Period, Buyer shall use commercially reasonable efforts to actively promote the sale of Products and to further develop new products that substantially incorporate the Acquired Assets." *Id*. "Commercially reasonable efforts" was not further defined by the contract. *Id.* at 472. Before the end of 2012, FLS was undoubtedly exerted substantial efforts to promote and develop the HLC product line, as described above.

From the end of 2012 through 2015, the Earnout Period, the global mining market suffered a downturn that impacted production despite best efforts. *Id.* at 458. As a result, FLS's materials handling division encountered difficulties in project execution, causing many products to run behind schedule. *Id.* at 459. This decline particularly impacted projects undergoing the FLS-izing process. One impacted product line was Holland Loader's. *Id.* at 461. To address market losses, FLS implemented an efficiency program known as "Stop the Bleeding." *Id.* at 459. The "Stop the Bleeding" program was a harm mitigation technique that paused FLS's development of products that were not previously designed or built. *Id.* When capital expenditure in the mining industry continued to fall through 2015, FLS extended its "Stop the Bleeding" policy and was forced to continue to place projects, like Holland Loader's, on hold. *Id.* at 461.

Despite the reduction in personnel that ensued during this period, FLS did continue to maintain Svatek and Tash's employment in their organization. *Id.* at 460. When industry directors declared that HLC products were a non-performing product line and that projected sales numbers could not be substantiated or justified, FLS persisted on behalf of HLC and combined the Holland Loader products with a better performing product line, the FLS harvesters, to promote them at development workshops. *Id.* at 462. Throughout this time, FLS also responded to inquiries from potential Holland Loader customers even if they were unable to finalize any sales through the end

of 2015 for reasons beyond their control. *Id.* at 463. These efforts also satisfy the "commercially reasonable" standard.

In August 2016, HLC brought suit against FLS in the Southern District of New York for breach of the "commercially reasonable standards" clause in the parties' IP Agreement. The District Court entered judgment for HLC.

SUMMARY OF ARGUMENT

In the ten years before this sale, Holland Loader performed inadequately by industry standards and made few sales. In May 2012, Holland Loader sold its intellectual property rights to FLS, an internationally established mining systems provider. *Id.* at 453. Since acquiring the HLC product line, FLS met commercially reasonable standards. Unfortunately, from the end of 2012 through 2015, the global mining market suffered an economic downturn. FLS was forced to shift resources away from previously undeveloped product lines, like Holland Loader's, to protect its business interests. Holland Loader now contends that FLS's actions constitute a breach Section 6.1(b) of their IP Agreement as it relates to an otherwise undefined "commercially reasonable efforts" provision. *Id.* at 456. FLS's business interests, especially during a market downturn, inform the efforts they could dedicate to their product lines. Even in this context, FLS met commercially reasonable efforts in its treatment of the HLC product line.

Case law in New York and in other jurisdictions does not provide a clear definition or standard for what constitutes "commercially reasonable efforts." In holding that FLS failed to perform "commercially reasonable efforts" in its marketing and development of Holland Loader intellectual property, the District Court assessed FLS's conduct against an improper narrow "objective industry standard." That standard incorrectly privileged Holland Loader's expert

testimony of business standards in the *general* mining industry over FLS's competing testimony of industry standards *specific* to FLS's industry subfield.

This was reversible error. When assessing "commercially reasonable efforts" provisions, courts should balance a properly-defined objective industry standard against a promising company's subjective business judgment, taking into consideration external market factors. Doing so allows court to consider the effort a company *did* take to further a product line, rather than speculating on the counterfactual efforts it *could have taken* in an objective world devoid of a particularized context.

FLS appeals to this Court so that the reasonableness of its actions can be properly considered in light of the relevant facts.

ARGUMENT

I. Assessing FLS's Performance of "Commercially Reasonable Efforts" Requires Balancing a Properly-Defined Objective Industry Standard Against FLS's Subjective Business Judgment.

When a "commercially reasonable efforts" clause is undefined in a contract, a court assessing compliance with the clause must conduct a holistic review of the applicable standard practices of an industry, balanced against evidence of how the promisor exercised business judgment in its actual economic context.

New York courts have not settled on an established definition of "commercially reasonable efforts." *CSI Inv. Partners II, L.P. v. Cendant Corp.*, 507 F. Supp. 2d 384 (S.D.N.Y. 2007). Interpretations of other efforts clauses under New York law, including "best efforts" or "reasonable efforts" clauses, are similarly unsettled. *See Bloor v. Falstaff Brewing Corp.*, 601 F.2d 609, 613 n.7 (2d Cir. 1979). Jurisdictions beyond New York have likewise failed to reach a

universally accepted standard for applying "commercially reasonable efforts" clauses. *See Citri-Lite Co. v. Cott Beverages, Inc.*, 721 F. Supp. 2d 912 (E.D. Cal. 2010).

Without a clear definition or standard against which a court can assess a promisor's efforts, a court should consider all available, relevant evidence of the objective performance standards in the promisor's specific industry. Furthermore, courts must undertake a subjective analysis of how the promisor exercised business judgment in its actual economic context.

a. Identifying the Proper Objective Industry Standard Requires Balancing Expert Testimony as to Common Business Practices.

Without a standard defined in the contract for applying a "commercially reasonable efforts" clause, courts must give appropriate weight to expert testimony as to what is objectively reasonable behavior in an industry.

The District Court attempted to parse a definition of "commercially reasonable efforts" left otherwise undefined in the parties' contract. The Court stated that "[w]hen the term 'commercially reasonable efforts' is not defined by the contract . . . the party seeking to enforce [an] efforts provision" is obligated to "establish the objective standard by which the breaching party's efforts are to be judged, in the context of [its] particular industry." 313 F. Supp. 3d at 472 (citing *In re Chateaugay Corp*., 198 B.R. 848 (S.D.N.Y. 1996), *aff'd*, 108 F.3d 1369 (2d Cir. 1997)). In determining what objective industry standard HLC established, the Court relied primarily on HLC's expert testimony without weight given to FLS's competing expert testimony. This was reversible error, as the Court was obligated to weigh the expert testimony of both parties to determine what is considered "commercially reasonable" in the applicable industry standard.

Giving balanced weight to the competing, credited testimony of expert witnesses provides courts with a more complete understanding of the objective considerations companies should make in their business dealings. Careful and balanced consideration of both parties' testimony on what

constitutes commercially reasonable efforts will allow for a better picture of industry standards and practices.

b. Courts Must Also Give Weight to a Promisor's Subjective Business Judgment, as Exercised in an Actual Economic Context.

New York case law requires courts applying "commercially reasonable efforts" clauses to undertake both an objective and subjective analysis of a promisor's conduct.

While one element of the commercially reasonable efforts analysis requires an assessment of the promisor's conduct against an "objective standard," *see Sekisui Am. Corp. v. Hart*, 15 F. Supp. 3d 359, 381 (S.D.N.Y. 2014), an element of subjective analysis must also be taken into consideration when determining what is commercially reasonable for any particular business at any particular point in time, *see Microboard Processing, Inc. v. Crestron Elec., Inc*., No. 3:09-cv-708 (JBA), 2011 WL 1213177, at *3 (D. Conn. Mar. 29, 2011) (concluding that courts "must also take into account factors such as the skills and costs associated with [performing under the contract] in accordance with the industry standards compared to the costs to [the promisor] of how it [performed under the contract]").

The subjective test states that while a promisor must exert some conscious effort toward the other party, no promisor can be expected to act against its own business interests. *MBIA Ins. Corp. v. Patriarch Partners VIII, LLC*, 950 F. Supp. 2d 568, 618 (S.D.N.Y. 2013) ("*MBIA II*"); *Citri-Lite Co.*, 721 F. Supp. 2d at 924; *LeMond Cycling Inc. v. PTI Holding, Inc.*, No. 03-Civ-5441 PAM/RLE, 2005 WL 102969 (D. Minn. Jan. 14, 2005). By weighing FLS's testimony as to its business interests to a lesser degree when conducting its "commercially reasonable efforts" analysis, the District Court placed undue emphasis on "industry standards" rather than what was actually "commercially reasonable" for a company like FLS to do in its economic context.

While the District Court correctly deferred to experts to determine the objective standards by which "commercially reasonable efforts" are understood, more weight should be assigned to FLS's testimony as to its business judgment. As both the District Court and other courts have emphasized, a contractual requirement to act in a commercially reasonable manner does not require a party to act against its own business interests, "which it has a legal right to protect." 313 F. Supp. 3d at 477; *MBIA II*, 950 F. Supp. 2d at 618. Determining whether a party would be required to act against its business interests while performing a contractual duty is inherently a subjective interpretation. *See* 950 F. Supp. 2d at 618 (citing *Citri-Lite Co.*, 721 F. Supp. 2d at 924); *LeMond Cycling Inc.*, 2005 WL 102969, at *5 ("Although an objective component is instructive as to whether or not [the promisor] acted with commercial reasonableness, there must be a subjective evaluation as well. No business would agree to perform to its detriment and therefore whether or not [the promisor] performed with commercial reasonableness also depends on the financial resources, business expertise, and practices of [the promisor]."). The legal right to protect one's own business interest constitutes a larger portion of commercially reasonable efforts than originally understood.

Subjective analysis of a company's efforts gives context to the objective standards by which a company comports itself in its business dealings. When evaluating whether compliance with an "industry standard" is "commercially reasonable," courts should consider factors such as the skills and costs associated with performing under the contract. *Citri-Lite Co.*, 721 F. Supp. 2d at 923-24. This information is best gathered by sharing the burden of establishing objective and subjective industry standards between both parties.

While the District Court acknowledged that the "objective standard is tempered . . . by considerations of the promisor's business interests," 313 F. Supp. 3d at 472, the Court left open

the degree to which a subjective analysis of business conditions should be weighed. In whole, the District Court provided little consideration of FLS's business judgment, relying primarily on the objective standard of industry behavior which it derived from Holland Loader's expert testimony to assess FLS's performance. While the Court determined that FLS *did* make efforts to market Holland Loader products, it ultimately determined that "based on Humphrey's testimony at trial . . . although [FLS] did not share the same view of the specific substance of the customary business plan process," these efforts were not commercially reasonable enough as they can be "traced largely to the company's failure to plan." *Id*. at 475.

Yet, a subjective analysis of the context in which a company acts is crucial to determine if the company's actions were reasonable. "No business would agree to perform to its detriment, and therefore, whether . . . [a company] performed with commercial reasonableness also depends on the financial resources, business expertise, and practices of [the company]." *LeMond Cycling Inc.*, *2*005 WL 102969, at *5.

The appropriate analysis under New York law for the "commercially reasonable efforts" clause in this case would require greater weight to be placed on FLS's expert testimony of what constitutes "commercially reasonable efforts" within the industry, as well as a contextual analysis of its business judgment within an unforeseen global mining market downturn.

II. Balancing FLS's Business Judgment Against an Objective Industry Standard Shows that FLS Acted in a Commercially Reasonable Manner Despite a Global Economic Downturn.

If the Court had applied the proper legal rule above, it would have found that FLS acted in a commercially reasonable manner toward Holland Loader's product line throughout the contract period. An objective industry standard for marketing and product development that considers the expert testimony of both HLC and FLS would be easily met by FLS, despite FLS's inability to

complete the FLS-izing process for Holland Loader during the global mining market downturn. Had the District Court considered the context of this economic downturn, it would have found FLS exercised its best business judgment by continuing to promote and sell Holland Loader's product line. These efforts included hiring decisions and product development initiatives that FLS took for no other product line. 313 F. Supp. 3d at 474. Analyzed in this way, FLS's actions in support of the Holland Loader product line were more than reasonable—they went above and beyond FLS's efforts for its other products.

a. The District Court Failed to Give Proper Weight to FLS's Evidence of an Objective Industry Standard for Its Mining Subfield.

FLS's expert testimony provided evidence of an objective industry standard that would apply to any company in FLS's position as a provider of customized, complex solutions in the mining industry. In determining the objective industry standard that would apply to FLS's performance under the parties' agreement, the District Court erred in placing more weight on Holland Loader's expert testimony than on the testimony of FLS's expert.

While Holland Loader's expert described standards for products marketed for individual sale, FLS emphasized that a complex, customized solutions provider should be project- or system-focused. *See id.* at 465. This discrepancy between Holland Loader and FLS's understanding of industry standards is crucial because the District Court ultimately found that "FLS's failure to use commercially reasonable efforts to actively promote the Holland Loader products can be traced largely to the company's failure to plan. There is no evidence of a clear marketing plan." *Id.* at 475. Had the court given sufficient weight to FLS's expert testimony on objective industry standards, it would have found FLS deployed conscious, objectively reasonable efforts to market Holland Loader products. FLS's expert shared that marketing materials in this industry are "typically limited to brochures, pamphlets, presentations, and web-based content all containing

only basic equipment information." *Id.* at 465. These are the same deliverables FLS ultimately made for the HLC product line. *See id.* at 465.

Setting aside FLS's expert testimony runs perilously close to an analysis of what FLS *could have done*, rather than what it actually *did*. As some courts have stated, evaluating a party's compliance with a "commercially reasonable efforts" requirement should not involve a "hindsight" comparison between the party's actual conduct and the conduct it could have taken to produce a better result. *See Bear, Stearns Funding, Inc. v. Interface Grp.-Nevada, Inc.*, No. 03-Civ-8259 CSH, 2007 WL 1988150 at *22 (S.D.N.Y. 2007). A court should evaluate whether the party's *actual conduct* was reasonable. This analysis is better served weighing the actions FLS's expert described as objectively standard to ensure a balanced, more complete assessment of whether a breach occurred.

b. The District Court Erred in Overlooking FLS's Subjective Business Interests and Judgments Made During a Multi-Year Economic Crisis.

Analysis of objective standards for commercially reasonable efforts are necessarily tempered by subjective understanding of a company's own interest in maintaining financial solvency, particularly in times of crisis. Any court applying New York law to "commercially reasonable efforts" clauses must consider subjective determinations of a company's business interests, particularly when external crises impact the business's viability during performance.

The District Court determined that FLS breached its "commercially reasonable efforts" clause for "failure to allocate the resources needed to complete the FLS-izing process, which involved design and safety reviews and was also a predicate to delivery of a sold product." 313 F. Supp. 3d at 476. The Court went on to hold that "FLS's failure to use its usual business development efforts in connection with the Holland Loader products not only deviated from the industry norm but also from FLS's own internal practice." *Id.* at 477. This analysis failed to assess

the reasonableness of FLS's efforts in light of its own best interests and business judgment during a global mining market downturn.

Courts should consider dramatic economic fluctuations that directly influence a company's business practices when determining whether the company conducted itself in a commercially reasonable way. In *Timberline Dev. LLC v. Kronman*, the New York Court of Appeals referred to a "boom in the real estate market" when evaluating reasonable efforts obligations. 702 N.Y.S.2d 237, 240 (N.Y. 2000). If a court can consider a market boom when determining reasonable efforts, a court should also consider a market downturn like the one FLS experienced. This is particularly true because "a best efforts clause imposes an obligation to act in good faith in light of one's own abilities." *Bloor*, 601 F.2d at 613 n.7 (2d Cir. 1979) (Friendly, J.). In *Citri-Lite*, a District Court outside of New York correctly rejected the argument that one objective set of standards not contractually identified and agreed upon should define what is commercially reasonable, given that "[b]oth parties obviously expect to mutually benefit from" a contract, and that "it is an absurdity to suggest a reasonable business entity would contractually obligate itself to operate without regard to its business interests." 721 F. Supp. 2d at 924.

FLS's "Stop the Bleeding" program indicates its subjective efforts to remain solvent despite economic downturn. *See* 313 F. Supp. 3d at 459. Placing resources behind underdeveloped and risky product lines, like Holland Loader's, during this period would run antithetical to FLS's larger business responsibilities in a time of crisis. This subjective analysis of FLS's business decisions informs an objective analysis because FLS is part of a risk-averse industry where sensitivities are understandably heightened in periods of economic downturn.

Other courts applying New York law have considered the "resource constraints" a promisor company "faced" as convincing evidence on the record to support a finding that best efforts were

met. *E.g.*, *Vestron, Inc. v. Nat'l Geographic Soc'y*, 750 F. Supp. 568, 593 (S.D.N.Y. 1990). This approach should also apply to "commercially reasonable efforts" analysis.

While the District Court properly acknowledged that FLS has a legal right to protect its business interests, including the right to re-prioritize its product lines based on financial reasons, the Court did not consider FLS's subjective needs when assessing the company's conduct during a global economic downturn. For example, the Court determined that the formal decision to table the Holland Loader products was "not merely a temporary fix to a financial problem," because "FLS introduced no evidence that compliance with its contractual obligations would have crippled it or otherwise caused the company financial hardship." 313 F. Supp. 3d at 477. In staking this claim, the court failed to consider the indeterminate nature of the global mining market downturn and risk-averse nature of the industry, which caused FLS to implement its "Stop the Bleeding" efficiency program in the first instance. The Court did not acknowledge FLS's resource constraints when analyzing whether it acted in a commercially reasonable way. Had it considered this fact, the Court would have found FLS's efforts were reasonable.

Even though the downturn forced various mining companies into bankruptcy or to substantially limit their capital expenditures and order intake, FLS continued to act in a commercially reasonable manner toward its Holland Loader product line. FLS retained Svatek and Tash—paid employees specifically dedicated to advancing the Holland Loader product line during the downturn. *Id.* at 460. While FLS could not complete the FLS-izing process for Holland Loader, it continued to meet threshold industry standards in its dealings with the product line. "Reasonable efforts to supply a product are not necessarily the same as actual success in supplying the product." *Soroof Trading Dev. Co., Ltd. v. GE Fuel Cell Sys., LLC*, 842 F. Supp. 2d 502, 511 (S.D.N.Y. 2012). FLS exerted reasonable efforts toward Holland Loader's product line through these and

other initiatives, despite its inability to make a sale due to the downturn. FLS's actions went above and beyond what might otherwise be expected of them in this period.

Overall, despite the economic crisis, FLS made a conscious effort toward promoting and retaining the Holland Loader product line. These efforts cannot and should not be overlooked.

c. The Court Should Give Greater Weight to the Efforts FLS Undertook for Holland Loader During the Mining Industry's Severe Economic Downturn.

Conducting a balanced objective and subjective analysis of FLS's actions toward Holland Loader shows the ways FLS took commercially reasonable steps to protect the HLC product line despite the economic downturn.

A promise to use commercially reasonable efforts requires that the "promising party undertake at least some activity," which FLS clearly did through its dealings with Holland Loader. 313 F. Supp. 3d at 475; *see, e.g.*, *SATCOM Int'l Grp. PLC v. ORB-COMM Int'l Partners, L.P.*, No. 98-Civ-9095 DLC, 2000 WL 729110, at *10, 20 (S.D.N.Y. June 6, 2000) (finding no commercially reasonable efforts to promote where the defendant "routinely" ignored customer inquiries, "repeatedly failed to pursue marketing leads," and refused to use "*any* print advertising or other 'generally recognized vehicles of promotion' in its territories"). FLS did not "routinely ignore inquiries from parties interested," or "repeatedly fail to pursue marketing leads." On the contrary, under a balanced view of industry standards of reasonableness, FLS met its requirement to act in a commercially reasonable way throughout its dealings with Holland Loader.

FLS responded to inquiries and met its industry-specific marketing standards. *See* 313 F. Supp. 3d at 460. Despite the market downturn and Holland Loader's incomplete design process, FLS Spokane revised existing Holland Loader brochures and created new graphics for this line. *Id.* at 458. FLS developed marketing materials with general dimensions and basic operating parameters for Holland Loader products, standard procedure in the industry. *Id.* at 465. A Global

Material Handling Brochure developed by FLS for business development listed Holland Loader among thirty-five other products, and a short description of Holland Loader products indicated that the bidirectional loader was well suited for projects such as highways, airports, dams, irrigation and flood control, among other applications. *Id.* at 459. Furthermore, when industry directors concluded that HLC products were a non-performing product line and that projected sales numbers could not be substantiated or justified, FLS combined the Holland products with a better performing product line, the FLS harvesters, to market them more successfully at development workshops. *Id.* at 462.

Amid a global mining market downturn, FLS completed more than just "some activity" with respect to the Holland Loader product line. FLS met the "commercially reasonable standard" threshold and acted in good faith throughout its relations with Holland Loader.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be reversed. In the alternative, this case should be remanded to the District Court with instructions to apply the proper legal standard.

Respectfully submitted,

/s/ Valentina Guerrero

Valentina Guerrero
YALE LAW SCHOOL
127 Wall Street
New Haven, Connecticut 06511

Counsel for the Appellant

Applicant Details

First Name	**Margaret**
Last Name	**Lederer**
Citizenship Status	**U. S. Citizen**
Email Address	**mjl99@duke.edu**
Address	**Address** Street **119 W. 71st St. Apt. 7A** City **New York** State/Territory **New York** Zip **10023** Country **United States**
Contact Phone Number	**917-750-2797**

Applicant Education

BA/BS From	**Johns Hopkins University**
Date of BA/BS	**December 2016**
JD/LLB From	**Duke University School of Law** **https://law.duke.edu/career/**
Date of JD/LLB	**May 1, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Duke Law Journal**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Helfer, Larry
Helfer@law.duke.edu
919-613-8573
Gray, Kendall
gray@law.duke.edu
919-613-7173
Blocher, Joseph
Blocher@law.duke.edu
(919) 613-7018

This applicant has certified that all data entered in this profile and any application documents are true and correct.

119 West 71st Street, Apt. 7A
New York, NY 10023

June 4, 2023

The Honorable John Walker, Jr.
United States Court of Appeals for the
Second Circuit
157 Church Street, 17th Floor
New Haven, CT 06510

Dear Judge Walker:

I am writing to apply for a clerkship in your chambers during the 2025–26 term or any term thereafter. I have recently graduated from Duke University School of Law, where I was in the top five percent of my class and an Articles Editor on the *Duke Law Journal*. Following graduation, I will work as a litigation associate at Proskauer Rose LLP before serving as a law clerk for Judge Sidney H. Stein of the Southern District of New York during the 2024–25 term. I would be honored to bring my experiences to your chambers.

At Duke Law, I built strong research, analytical, and writing skills. In my first year, I received the James S. Bidlake Memorial Award after earning the highest grade in my legal research and writing class. In addition, I was nominated by my professor to serve as a legal writing tutor. In that role, I led one-on-one sessions with first-year students to improve their legal writing. As a second-year student, I researched and wrote a student Note analyzing civil commitment law and proposing statutory reforms to increase procedural justice. My Note was selected by my peers to be published in Volume 72 of the *Duke Law Journal*. Upon publication, the Wilson Center for Science and Justice invited me to present my research.

I have continued to develop my legal research and writing skills as a professional. As a judicial intern for Judge Katherine Polk Failla of the Southern District of New York, I researched and drafted opinions on dispositive motions and worked directly with Judge Failla to prepare them for publication. Most recently, as a summer associate, I researched and drafted an amicus brief for submission to a state supreme court. I would be honored to contribute my skills to the important work of your chambers.

Enclosed please find my resume, transcripts, writing sample, and letters of recommendation from Professors Joseph Blocher, Laurence Helfer, and Kendall Gray. Judge Failla has also agreed to serve as a reference in support of my application. I am happy to provide any additional information you require. Thank you for your consideration.

Very truly yours,

Maggie Lederer

MARGARET (MAGGIE) LEDERER

1500 Duke Univ. Rd, Apt J3B
Durham, NC 27701

mjl99@duke.edu
(917) 750-2797

119 W. 71st St, Apt 7A
New York, NY 10023

EDUCATION

Duke University School of Law, Durham, NC
Juris Doctor, May 2023
GPA: 3.82
Honors: Academic Honors (Top 5% of Class)
Duke Law Journal, *Articles Editor*
Legal Analysis, Research, and Writing (LARW), *Writing Tutor (by nomination, Fall 2021)*
James S. Bidlake Memorial Award (Superior Achievement in LARW)
Dean's Scholarship
Activities: Duke Law Mock Trial, *Board Member*
Duke Immigrant and Refugee Project, *Pro Bono Director*
Jewish Law Students Association, *Board Member*
Publication: *Not So Civil Commitment: A Proposal for Statutory Reform Grounded in Procedural Justice*, 72 DUKE L.J. 903 (2023)
Presentation: The Wilson Center for Science and Justice, *Not So Civil Commitment: A Virtual Panel Discussion* (Apr. 12, 2023)

Johns Hopkins University, Baltimore, MD
Bachelor of Arts in Psychology, with Honors, December 2016
GPA: 3.75
Study Abroad: La Universidad de Sevilla – Seville, Spain, Fall 2015
Activities: Johns Hopkins Writing Center, *Undergraduate Tutor*
Adelante Familia (House of Ruth), *Volunteer*

EXPERIENCE

The Honorable Sidney H. Stein, U.S. District Court (S.D.N.Y.), New York, NY
Law Clerk, August 2024 – August 2025

Proskauer Rose LLP, New York, NY
Litigation Associate, Fall 2023 – August 2024

Proskauer Rose LLP, New York, NY
Summer Associate, May 2022 – July 2022

- Drafted affinity group policy for large nonprofit client and advised client on related issues.
- Researched complex spoliation and privilege issues and summarized results for litigation team.
- Prepared witnesses for defensive depositions by drafting deposition outlines in antitrust case.

The Honorable Katherine Polk Failla, U.S. District Court (S.D.N.Y.), New York, NY
Judicial Intern, May 2021 – July 2021

- Researched and drafted opinions on procedural and dispositive motions, including motions for judgment on the pleadings and cross-motions for summary judgment.
- Participated in daily conferences with Judge Failla and her law clerks to discuss ongoing proceedings.

Proskauer Rose LLP, New York, NY
Litigation Paralegal, June 2017 – December 2019

- Worked alongside case teams in all phases of large-scale litigation, including initial document review, pleading, written and electronic discovery, motion practice, trial, and appellate proceedings.
- Led paralegal team in two bench trials in the Southern District of New York Bankruptcy Court.

Office of the Public Defender for Maryland, Mental Health Division, Baltimore, MD
Intern, January 2017 – May 2017

- Assisted investigators in interviewing clients in in-patient psychiatric facilities, reviewing medical records, and writing case assessment reports in preparation for involuntary commitment hearings.
- Summarized civil and criminal commitment processes for attorney training materials.

ADDITIONAL INFORMATION

Proficient in Spanish. Spent five months teaching English to Vietnamese students before law school. Enjoy skiing and making ceramics. Avid tennis fan.

MARGARET (MAGGIE) LEDERER

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119 W. 71st St, Apt 7A
New York, NY 10023

UNOFFICIAL TRANSCRIPT
DUKE UNIVERSITY SCHOOL OF LAW

2020 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Civil Procedure	Sachs, S.	3.9	4.50
Torts	Helfer, L.	3.9	4.50
Contracts	Gulati, M.	3.3	4.50
Legal Analysis, Research, Writing	Gray, K.	*Credit Only*	0.00
Professional Development	Multiple	*Credit Only*	0.00

2021 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Constitutional Law	Blocher, J.	3.9	4.50
Criminal Law	Grunwald, B.	3.9	4.50
International Law	Helfer, L.	3.9	3.00
Legal Analysis, Research, Writing	Gray, K.	4.1	4.00

2021 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Ethics: Large Firm Practice	Gray, K.	4.1	2.00
Evidence	Stansbury, S.	4.0	3.00
Negotiation	Thomson, C.	3.8	3.00
Property	Richman, B.	3.8	4.00

2022 WINTER TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Deposition Practice & Strategy	Katz, D.	*Credit Only*	0.50
The Right to Bargain in Professional & Amateur Sports	Grieb, C., Smith, D.	*Credit Only*	0.50

2022 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Business Associations	Cox, J.	3.6	4.00
Criminal Procedure: Adjudication	Dever, J.	3.6	3.00
Federal Courts	Siegel, N.	3.9	4.00
Scholarly Writing Workshop	Liguori, M.	3.9	3.00
Ad Hoc Tutorial: Reproductive Rights	Bradley, K.	*Credit Only*	1.00

2022 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
First Amendment	Benjamin, S.	3.6	3.00
Immigrant Rights Clinic	Evans, K.	3.9	6.00
Remedies	Levy, M.	3.8	3.00
Legal Interviewing & Counseling	Lukens, M.	*Credit Only*	2.00
Privacy in a Post-*Dobbs* World	Dellinger, J.	*Credit Only*	1.00

2023 WINTER TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Hearings Practice	Cox, C.	*Credit Only*	0.50
Mindfulness for Law Students	Raker, K.	*Credit Only*	0.50
Role of Gender in Negotiation	Thomson, C.	*Credit Only*	0.50

2023 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Advanced Immigrant Rights Clinic	Evans, K.	--	2.00
Criminal Procedure: Investigation	Griffin, L.	--	3.00
Judicial Decision-making	Lemos, M.	--	3.00
Trial Practice	Dockterman, M.	--	3.00
Topics in Access to Justice	Petkun, J.	--	2.00

TOTAL CREDITS: 73
CUMULATIVE GPA: 3.82

JOHNS HOPKINS
UNIVERSITY

ZANVYL KRIEGER SCHOOL OF ARTS & SCIENCES
Baltimore, MD 21218 www.jhu.edu/registrar

UNDERGRADUATE INTERNAL TRANSCRIPT

Student Name	Hopkins ID	Date of Birth	JHU Degree and Date Conferred	Date Printed
Lederer, Margaret Joan	4754C7	04/17/xxxx	Bachelor of Arts 12/30/2016	6/14/2018

Year of Study	Major	Advisor	Page
Senior	Psychology	Flombaum, Jonathan	Page 1 of 2

Other Major(s)	Minor(s)
xxxxx	Spanish for the Professions;Entrepreneurship & Management

DIV	DEPT	CRSE #	COURSE TITLE		CRSE AREA	GRADE		CREDITS	GPA CREDITS	GPA PTS
Fall 2013			**Advanced Placement Examination**							
	BIOL		Biology (Lab I Waived) AS.020.151		N			4.0		
	BIOL		Biology (Lab II Waived) AS.020.152		N			4.0		
	GRLL		Spanish Lang AS.210.111					3.0		
	GRLL		Spanish Lang AS.210.112					3.0		
						TOTAL		14.0		
Fall 2013					Pre-Major					
AS	BIOL	020.135	Project Lab: Phage Hunting		N	S		2.0	0.0	0.0
AS	GRLL	210.311	Advanced Spanish I		H	S		3.0	0.0	0.0
AS	IDEP	360.133	Great Books at Hopkins		H	S	*	3.0	0.0	0.0
AS	MATH	110.109	Calculus II		Q	S		4.0	0.0	0.0
AS	PSYC	200.141	Foundations of Brain, Behavior and Cognition		NS	S		3.0	0.0	0.0
			TERM GPA	0.00		TOTAL		15.0	0.0	0.0
			CUM GPA	0.00		TOTAL		15.0		
Spring 2014					Pre-Major					
AS	BIOL	020.136	Phage Hunting II		N	A+		2.0	2.0	8.0
AS	ENGL	060.212	British Lit II: 18th C. - Present		H	B+		3.0	3.0	9.9
AS	GRLL	210.312	Advanced Spanish II		H	B+		3.0	3.0	9.9
AS	SOCI	230.150	Issues-Intnl Development		S	B+		3.0	3.0	9.9
EN	ENTR	660.105	Introduction to Business		S	A	*	4.0	4.0	16.0
			TERM GPA	3.58		TOTAL		15.0	15.0	53.7
			CUM GPA	3.58		TOTAL		30.0		
			Dean's List							
Fall 2014					Psychology					
AS	ENGL	060.107	Introduction to Literary Study		H	B+	*	3.0	3.0	9.9
AS	ENGL	060.307	Training\Writing\Consulting		H	S	*	1.0	0.0	0.0
AS	GRLL	210.411	Translation for the Professions		H	A-	*	3.0	3.0	11.1
AS	PSYC	200.101	Intro to Psychology		NS	B+		3.0	3.0	9.9
EN	APPM	550.111	Statistical Analysis I		EQ	A		4.0	4.0	16.0
EN	ENTR	660.308	Business Law I		S	A-		3.0	3.0	11.1
			TERM GPA	3.63		TOTAL		17.0	16.0	58.0
			CUM GPA	3.60		TOTAL		47.0		
			Dean's List							
Spring 2015					Psychology					
AS	ENGL	060.338	Literary Scenes		H	A-	*	3.0	3.0	11.1
AS	PSYC	200.212	Abnormal Psychology		S	B+		3.0	3.0	9.9
AS	PSYC	200.325	Law Psych:Clinical Appl		S	A		3.0	3.0	12.0
EN	APPM	550.112	Statistical Analysis II		EQ	A		4.0	4.0	16.0
EN	ENTR	660.250	Principles of Marketing			A-		3.0	3.0	11.1
			TERM GPA	3.76		TOTAL		16.0	16.0	60.1
			CUM GPA	3.66		TOTAL		63.0		
			Dean's List							
Fall 2015			**Council International Educ Exch**							
	ANTH		Anthropology & Social Exclusion TR.070.300		HS			3.0		
	GRLL		Lat Amer & Spanish Lit of the Margins TR.215.300		H			3.0		
	HIST		History of Contemporary Spain TR.100.300		HS			3.0		
	NDEP		Narrative in English Language TR.399.315					3.0		

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Lederer, Margaret Joan	4754C7	04/17/xxxx	Bachelor of Arts 12/30/2016	6/14/2018

Year of Study	Major	Advisor	Page 2 of 2
Senior	Psychology	Flombaum, Jonathan	

Other Major(s)	Minor(s)
xxxxx	Spanish for the Professions;Entrepreneurship & Management

DIV	DEPT	CRSE #	COURSE TITLE		CRSE AREA	GRADE		CREDITS	GPA CREDITS	GPA PTS
	PSYC		Psych of Development in Youth, Adulthood, and Old Age TR.200.300		S			3.0		
						TOTAL		15.0		
			Study Abroad at the Universidad de Sevilla, Spain. All courses taken in Spanish.							
Spring 2016						Psychology				
AS	GRLL	210.412	Spanish Language Practicum		H	A-	*	3.0	3.0	11.1
AS	PSYC	200.133	Intro Social Psychology		S	A		3.0	3.0	12.0
AS	PSYC	200.376	Psychopharmacology		NS	A-		3.0	3.0	11.1
EN	ENTR	660.203	Financial Accounting			A		3.0	3.0	12.0
EN	ENTR	660.311	Law and the Internet		S	A		3.0	3.0	12.0
			TERM GPA	3.88		TOTAL		15.0	15.0	58.2
			CUM GPA	3.71		TOTAL		78.0		
			Dean's List							
Fall 2016						Psychology				
AS	GRLL	210.314	Spanish for Intnl Commerce		H	A		3.0	3.0	12.0
AS	PSYC	200.207	Research Methods in Experimental Ps		QS	A+	*	3.0	3.0	12.0
AS	PSYC	200.305	Adv Sem in Forensic Psychology		NS	A	*	3.0	3.0	12.0
AS	PSYC	200.382	Models of Psychotherapy		S	A	*	3.0	3.0	12.0
EN	PCOM	661.380	Business Analytics		Q	A-		3.0	3.0	11.1
			TERM GPA	3.94		TOTAL		15.0	15.0	59.1
			CUM GPA	3.75		TOTAL		93.0		
			Dean's List							
			CUMULATIVE GPA 3.75			TOTAL		77.0		
			CUMULATIVE DEGREE CREDITS			TOTAL		122.0		
			TOTAL D/D+ CREDITS					0.0		
			TOTAL AP & TRANSFER CREDITS					29.0		

Advisors:
Trujillo, Patrick 09/03/2013 - 12/30/2016
Sanchez, Loreto 01/25/2016 - 12/30/2016
Ewing, Megan M 01/25/2016 - 12/30/2016
Flombaum, Jonathan 05/27/2014 - 12/30/2016 - (Primary Advisor)

Spanish language waived through third and fourth semester level.
Calculus I waived
Graduated with General Honors

*******End Of Transcript*******

Duke University School of Law
210 Science Drive
Durham, NC 27708

May 19, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Re: Margaret Lederer

Dear Judge Walker:

I write this enthusiastic letter of recommendation on behalf of Margaret Lederer, a member of the Duke University Law School JD class of 2023, who has applied for a clerkship in your chambers. Ms. Lederer—or Maggie as I have come to know her—is a very bright, articulate, and talented student with very strong research and writing skills and a deep curiosity about the law and legal institutions. She is also conscientious, respectful, and a pleasure to work with.

Maggie was a student in the Torts course that I offered in the Fall of 2020. The course covers the traditional rules and doctrines of intentional torts, negligence, and strict liability. I apply a process and problem based approach to introduce students to the procedures by which attorneys allege and prove different tort causes of action and defenses, as well as how trial and appellate courts interpret and apply the common law and state and federal statutes. Through several real world problems, hypotheticals, and group exercises, students are introduced to the practical challenge litigating claims and defenses to serve the objectives of their clients and the broader interests of justice.

Maggie received a final grade of 3.9, placing her third in a Torts section of 29 students. I was especially impressed with her final exam, in particular her answer to a complex and detailed fact pattern on the tort of fraudulent misrepresentation. Maggie accurately identified all of the key legal issues, effectively marshalled the evidence to analyze them, and explained her reasoning in clear and cogent prose. I circulated Maggie's (anonymous) answer as a model for other students in the class to review.

Maggie was also a frequent and insightful contributor to class discussions, which was especially notable given that the course was taught entirely online due to the COVID-19 pandemic. Her remarks revealed a sophisticated understanding of the assigned materials and a subtle appreciation of how courts have adapted longstanding principles of American tort law and policy to new and diverse circumstances.

Maggie also enrolled in the International Law course that I taught in the Spring of 2021. The course considers the legal, political, and institutional issues relating to the rules governing the relations between nation states as well as between governments and private actors. Students engage in detailed analysis of treaty texts, domestic statutes, the resolutions of international organizations, and the rulings of international tribunals and national courts. Maggie's comments in class revealed a sophisticated understanding of the assigned materials and a subtle appreciation of how laws are shaped by the political and institutional contexts in which they are embedded.

The final examination in International Law that semester was an intricate fact pattern raising legal issues including decolonization, self-determination, human rights, international trade, and international adjudication. Maggie's final exam answer was excellent. She received a final grade of 3.9, which placed her fifth in a course of 48 students. Maggie's strong performance is even more remarkable when one considers that she was competing against many upper-division JD and foreign LLM students who also enrolled in the course.

Maggie's strong performance in these two courses is not an aberration. On the contrary, her overall grade point average of 3.82 places her comfortably within the top 5% of her JD class.

I have focused on Maggie's many academic accomplishments, but her contributions to extracurricular activities at Duke Law are also noteworthy. She is an Articles Editor of the Duke Law Journal, a Board member of the Duke Law Mock Trial team, and the Pro Bono Director for the Duke Immigrant and Refugee Project. Maggie's dedication to these initiatives and her ability to collaborate with other students is especially commendable.

In sum, I urge you to consider Maggie Lederer for a clerkship in your chambers. I am confident that you will not be disappointed if you offer her a position.

Very truly yours,
Laurence R. Helfer
Harry R. Chadwick, Sr. Professor of Law

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Duke University School of Law
210 Science Drive
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May 19, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Re: Maggie Lederer

Dear Judge Walker:

I write to give Maggie Lederer my highest recommendation as a candidate to clerk in your chambers. I served as Maggie's 1L legal writing professor and her upper-level ethics professor. In addition, Maggie has served as one of my most effective writing tutors. Based upon that exposure, I have absolute confidence in Maggie's intelligence, scholarship, legal skills, and her ability to work effectively as part of a team.

Maggie's scholastic achievement is beyond peer. In my legal writing class, Maggie consistently produced one of the top papers and she completed the course with the highest marks in the class. Similarly, in ethics, Maggie achieved the highest grade in a class that not only emphasized writing and analysis, but also team presentations and transactional drafting.

My classes emphasize the traits necessary to work with colleagues. In both my first-year and upper-level classes, all the students complete classroom exercises in teams maintained over the entire course. In that context, Maggie's team produced top-quality work and showed command of the skills underlying good teamwork. Beyond what I've seen in others, Maggie has served as a source of encouragement in her colleagues while gracefully pitching in where her individual skills would help the team succeed.

Finally, Maggie's service as a writing tutor gives an even better window into the type of person she is. Many first-year law students struggle under the demands of law school, and sometimes that struggle involves the new demands placed upon their writing. Maggie has had a particular gift for taking students experiencing this kind of stress, meeting them where they are, and giving them the tools to make substantial improvements. She has the analytical precision to accurately diagnose what a piece of writing needs. But she also has the empathy and incite to know how to encourage a struggling student in taking the next steps towards mastery.

My expectations for student work developed from over twenty years of practice as an appellate lawyer for a large firm. Based upon that standard, I would hire Maggie for my own team and be pleased to take responsibility for her work. Indeed, I did hire her as my tutor, and I am glad every day that I did so. I know she will serve you well. I therefore urge you to give her your fullest consideration and I thank you in advance for doing so. If I could provide any other information or answer any of your questions, I would enjoy speaking with you.

Sincerely yours,

Kendall Gray
Clinical Professor of Law

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Durham, NC 27708

May 19, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Re: Maggie Lederer (Duke Law '23)

Dear Judge Walker:

It is my pleasure to write this letter recommending Maggie Lederer for a clerkship in your chambers. Maggie has done extraordinarily well so far at Duke and will be a very strong law clerk. I recommend her highly.

I was fortunate to have Maggie in my Constitutional Law course in the spring of 2021. Because the course covered a wide range of doctrinal rules in addition to interpretive theories and historical context, I had a chance to observe and learn a lot about the students' skills and interests. And because the class was conducted entirely via Zoom, I found myself especially grateful for class participation, which I know was especially challenging for first year students who had never even set foot inside a law school classroom.

Maggie is not one to dominate class conversation, but she was always well-prepared when I called on her, and sometimes came up with an answer when everyone else was stumped. What really shone through, in addition to her remarkable intelligence, was a combination of humility and curiosity that frequently makes for remarkable learning. She was a frequent visitor to office hours, and her questions were always incisive without being shallow, and challenging without being frustrated. She genuinely wanted to make sense of the sprawling mass of constitutional law doctrine, and never gave up on that incredible task.

Her exam was truly exceptional, and I was happy to award her a 3.9 for the course. In fact, I was so impressed that I wrote to her to pass on my admiration, to which she wrote back that Constitutional Law was the course by which she was most "daunted," and that she'd doubled down in her efforts as a result, making a massive flowchart with which to answer con law questions. She shared the document at my request, and I have to say that it's one of the most impressive study aids I've seen a student create, beginning with the question "Who is the actor?" and then—depending on whether the answer is the President, Congress, or a state government—goes into the various tests and limits that constitutional law creates. I've been teaching this material for more than a decade, and it had never occurred to me to even *attempt* such an organization. With her gracious permission, I plan to use it as a teaching tool in future classes.

Maggie's performance on my exam was, incredibly, representative of her performance throughout her first year. In fact, *most* of her first year grades were 3.9s, with the only variances being a 3.3 in Contracts and a 4.1 in Legal Analysis, Research, and Writing (LARW). I'm inclined to write off the Contracts grade as an outlier, and to emphasize the off-the-charts grade in LARW—perhaps the most important first year course in terms of assessing the skills necessary for clerking. To put it all in perspective, Duke has an unflinching 3.3 median for all first-year courses, and only a small percentage of grades can be given in the 3.9-4.1 range.

Her 2L and 3L years have been similarly impressive, giving her a 3.82 GPA overall, with top marks in some particularly important classes, like a 3.9 in Federal Courts and a 4.0 in Evidence. Above and beyond her grades, Maggie has compiled an impressive record outside of class both during and even before her time at Duke. Unsurprisingly, she was asked to be a writing tutor for 1L students and selected as an Articles Editor of the *Duke Law Journal*, and her Note was selected for publication as well. She is also a pro bono director of the Duke Immigrant and Refugee Project, and a board member of Duke Law Mock Trial.

I suspect that some of Maggie's remarkable maturity and success in law school can be traced to her substantial and substantive work experience after college. After studying psychology at Johns Hopkins, Maggie interned at the Maryland Office of the Public Defender, working at in-patient psychiatric wards across Baltimore in connection with civil commitment hearings. That experience convinced her that she wanted to pursue law as a career, and she moved on to be a paralegal at Proskauer Rose. In her two and a half years at the firm, she eventually found herself running discovery, attending depositions, and managing trial prep—all experiences that undoubtedly will serve her well as a clerk.

Along the same lines, Maggie had the opportunity to intern for Judge Katherine Polk Failla of the U.S. District Court for the Southern District of New York. It sounds like Maggie had a particularly engaged experience in Judge Failla's chambers, including drafting an opinion in an interesting case involving a music student's claims that her conservatory owed her a refund for failing to provide in-person education and access to facilities following pandemic-related closures. See Flatscher v. Manhattan Sch. of Music, No. 20 CIV. 4496 (KPF), 2021 WL 3077500, at *11 (S.D.N.Y. July 20, 2021) ("Maggie Lederer, a rising second-year student at Duke Law School and an intern in my Chambers, provided substantial assistance in researching and drafting this Opinion.").

Maggie Lederer is already well on her way to a successful career in the law. She will be an exceptionally good clerk, and I

recommend her to your strongly. Please do not hesitate to contact me if you have any questions about her.

Sincerely yours,

Joseph Blocher
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WRITING SAMPLE

I wrote the following appellate brief for my Legal Analysis, Research, and Writing course at Duke Law in the spring of 2021. In this assignment, we were asked to create a textual argument concerning the meaning of "abduction" in the United States Sentencing Guidelines for a circuit court with no binding authority on the issue. In this brief, I represent the defendant-appellant, Mr. Dominik Cizek, who committed an unarmed robbery of a cell-phone store. During the course of this robbery, Mr. Cizek accompanied the store manager from the sales floor to the back room of the store. On appeal, I argue that the district court erred when it concluded that this conduct constituted an abduction and thus warranted a sentence enhancement.

STATEMENT OF THE CASE

Three years ago, Defendant-Appellant Dominik Cizek robbed a cell-phone store. JA1. As a result of his conduct, the district court sentenced Mr. Cizek to sixty months imprisonment, applying a four-level sentence enhancement for abduction. JA13; CA3. In doing so, Mr. Cizek fell victim to a rudderless interpretation of one provision of the United States Sentencing Guidelines ("Guidelines").

I. Congress created the Commission to write Guidelines that increase fairness and reduce sentencing disparities.

In 1984, Congress authored the Sentencing Reform Act to create a fair and effective federal sentencing system. U.S. Sent'g Guidelines Manual Ch.1, Pt.A(1)(3) (U.S. Sent'g Comm'n 2018). Through the Act, Congress created the United States Sentencing Commission ("Commission") to decrease sentencing disparities while increasing fairness and certainty. 28 U.S.C. § 991(b)(1)(B). To that end, the Commission promulgates Guidelines for federal judges to consult during sentencing. *Id.* § 994(a).

Within the Guidelines, the Commission assigns each crime an offense level. U.S.S.G. Ch.1, Pt.A(1)(2). But when certain "atypical," aggravating factors are present, the Commission calls for enhancements—increases to the offense level. *Id.* Based on this score, along with the offender's criminal history, the Commission recommends a narrow range for sentencing. *Id.* Here, the parties dispute the interpretation of the Guidelines' four-level robbery abduction enhancement.

II. Mr. Cizek commits an unremarkable robbery.

Three years ago, the T-Mobile store at 46-01 Queens Boulevard was robbed. JA1. On that morning, Mr. Cizek walked into the store unaccompanied. JA4–5. Ms. Keys, the assistant manager, had opened the store just five minutes earlier. JA5. As such, Ms. Keys was alone when

she noticed Mr. Cizek. JA5. At that time, Mr. Cizek announced he was conducting a robbery but that if Ms. Keys did as he said, "everything was going to be fine." JA5. Following directions, Ms. Keys opened the cash register for Mr. Cizek to claim the contents. JA5. After asking her to unlock several drawers, Mr. Cizek took a "bunch" of electronics. JA6.

Before leaving, Mr. Cizek asked the manager where the store kept its surveillance system. JA6. He assured Ms. Keys that if she gave him the surveillance recordings, "everything would be fine." JA6. The manager revealed that the store kept its surveillance system in the back. JA6. In her testimony, Ms. Keys noted that this back room is intended for authorized personnel only. JA7–8. Consequently, the store keeps this door locked during business hours, requiring a numerical code for entry. JA8. But the back room has another entry point: an exterior door that opens to a public street. *See* JA10 (noting that mail services "come to the back").

Mr. Cizek directed the manager to show him the surveillance system in this back room. JA6. At the same time, Mr. Cizek reminded her that "everything would be fine." JA6. After unlocking the door, the manager pointed Mr. Cizek to the surveillance system. JA7. There is nothing in the record indicating how long Mr. Cizek remained in this room, let alone any suggestion of violence. Indeed, Ms. Keys never saw Mr. Cizek brandish a weapon of any sort. *See* JA10–11. Nor does she allege that Mr. Cizek physically restrained her. JA11.

As he left, Mr. Cizek instructed the manager to count to 200, reassuring her that "everything would be okay." JA9. Following Mr. Cizek's directions, Ms. Keys waited in this back room—with the door presumably shut and relocked. *See* JA8–9 (noting the door is locked from the outside during business hours). After she finished counting, Ms. Keys emerged without physical injury. *See* JA9.

Months later, police arrested Mr. Cizek and charged him with violating 18 U.S.C. § 1951(a). CA3; JA1–3. After standing trial, Mr. Cizek was convicted. JA13. While he maintained his innocence at trial, Mr. Cizek has since expressed remorse for his actions. CA3.

III. The district court applies the abduction enhancement to Mr. Cizek.

[Omitted]

ARGUMENT

I. Mr. Cizek does not qualify for an abduction enhancement under the Guidelines.

Mr. Cizek challenges his sentence as procedurally erroneous. Specifically, Mr. Cizek contends that the district court misinterpreted the Guidelines when calculating his sentence. When a defendant challenges the district court's interpretation of the Guidelines, this Court reviews de novo. *United States v. Hasan*, 586 F.3d 161, 168 (2d Cir. 2009). De novo review demands this Court conduct an "independent and plenary" review, without deference to the district court's conclusion. *Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163, 168 (2d Cir. 2001).

The Guideline at issue here empowers the sentencing judge to add a four-level enhancement to the offender's sentence "if any person was *abducted* to facilitate commission of the [robbery] or to facilitate escape." *See* U.S.S.G. § 2B3.1(b)(4)(A) (emphasis added). As defined by the Commission, abduction means a "victim was forced to accompany an offender to a different location." *Id.* § 1B1.1 cmt. n.1(A). As demonstrated below, the district court misconstrued the abduction enhancement by applying it to Mr. Cizek. First, the plain meaning of abduction, taken in context, requires the offender forcibly move the victim *beyond* the scene of the crime. Second, the purpose of the Guidelines confirms that incidental movement within the crime scene cannot constitute abduction as the Commission intended it. As a result, this Court should vacate Mr. Cizek's sentence and remand for proper sentencing.

A. The ordinary meaning of abduction requires the offender move the victim beyond the scene of the crime.

When interpreting the Guidelines, the Court employs ordinary tools of statutory interpretation. *See United States v. Kleiner*, 765 F.3d 155, 159 (2d Cir. 2014) (applying canons of statutory construction to Guideline interpretation). A question of statutory interpretation "begin[s] with the text." *United States v. Rowland*, 826 F.3d 100, 108 (2d Cir. 2016). Indeed, courts assume that Congress "says what it means and means what it says." *Flood v. Just Energy Mktg. Corp.*, 904 F.3d 219, 235 (2d Cir. 2018) (cleaned up). As a result, courts scrutinize the drafters' chosen language to understand their intent. *Mei Xing Yu v. Hasaki Rest., Inc.*, 944 F.3d 395, 412 (2d Cir. 2019).

Courts begin with the meaning of the words themselves, whether defined by the Commission or their ordinary meaning. *See Bond v. United States*, 572 U.S. 844, 861–62 (2014) (considering ordinary meaning of defined term); *Rowland*, 826 F.3d at 108 (beginning interpretation with ordinary meaning of undefined term). As a starting place, courts often look to contemporary dictionary definitions. *New York v. U.S. Dep't of Justice*, 951 F.3d 84, 106 (2d Cir. 2020). But a dictionary definition "does not necessarily constitute the beginning and the end of statutory construction." *Union Carbide Corp. & Subsidiaries v. Comm'r*, 697 F.3d 104, 107 (2d Cir. 2012).

Rather, courts read language in context to avoid giving any one word "unintended breadth." *Rowland*, 826 F.3d at 109 (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)). In doing so, courts examine both "the specific context in which that language is used, [as well as] the broader context of the [Guideline] as a whole." *Id.* at 108 (quoting *Yates*, 574 U.S. at 528–29 (plurality opinion)). Finally, courts must ensure the proposed interpretation does not render any language obsolete. *United States v. Valente*, 915 F.3d 916, 922–23 (2d Cir. 2019).

Here, abduction requires the offender forcibly move the victim beyond the scene of the crime. First, nothing in the text of the Guidelines requires this Court accept the district court's reading. While abduction is defined, the Commission does not spell out what constitutes a different location.[1] Contemporary dictionaries define location as a "place of settlement, activity, or residence." *See, e.g.*, *The Random House Dictionary of the English Language* 1128 (2d ed. 1987). If the activity is robbery, then moving to a different location requires moving to a place *beyond* the site of the robbery. But a dictionary definition is only one piece of the puzzle. *See Union Carbide*, 697 F.3d at 107 (noting dictionary definition is not "the end of statutory construction").

Indeed, the district court's reading falls apart in light of the specific language the Commission uses within the abduction definition. *Cf. United States v. Williams*, 553 U.S. 285, 294 (2008) ("[A] word is given more precise content by [its] neighboring words."). In addition to the location element, abduction requires the offender force the victim "to accompany" them. U.S.S.G. § 1B1.1 cmt. n.1(A). Accompany means "to go along with." *The American Heritage Illustrated Encyclopedic Dictionary* 12 (1st ed. 1987). When used alone, accompany can encompass small, room-to-room movements. *Whitfield v. United States*, 574 U.S. 265, 268 (2015).

But here, accompany does not stand alone. Rather, the Commission requires that the offender accompany the victim "*to a different location*," enlarging the distance that the offender must move the victim. *See* U.S.S.G. § 1B1.1 cmt. n.1(A) (emphasis added) (defining abduction).

[1] Indeed, courts disagree over what qualifies as a different location. *Compare United States v. Hill*, 963 F.3d 528, 532–36 (6th Cir. 2020) (relying on textual analysis to reject abduction enhancement when offender moved victims to a back room), *with United States v. Hawkins*, 87 F.3d 722, 727–28 (5th Cir. 1996) (applying flexible, ad-hoc approach to accept enhancement when offender moved victim across a parking lot). Despite this split, this question of interpretation remains an issue of first impression for this Court.

If movement between rooms constituted abduction, the Commission had no reason to include "different location." In other words, the district court's interpretation renders "different location" superfluous. And this Court strives to construe language "so that no part [becomes] inoperative or superfluous, void or insignificant." *See Valente*, 915 F.3d at 923 (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)) (rejecting construction that renders language superfluous).

Tellingly, the Commission's example of abduction conflicts with the district court's interpretation. To exemplify abduction, the Commission describes a robber "forcing a bank teller from the bank into a getaway car." U.S.S.G. § 1B1.1 cmt. n.1(A). The Commission's chosen language confirms that courts should not view location at a granular level. Indeed, the Commission conceptualized location as the bank itself—not the victim's original position within it. While not "inflexible limitations," the examples serve as "meaningful signposts" of the Commission's intent. *See United States v. Anglin*, 169 F.3d 154, 164–65 (2d Cir. 1999) (rejecting interpretation that is "materially different" from the Guidelines' example). The district court ignored this signpost.

Further, the district court's interpretation of abduction clashes with the gravity of the Commission's other four-level robbery enhancements. *See generally Rowland*, 826 F.3d at 108 (considering "broader context" when construing meaning). Within the Guidelines, the Commission calls for a four-level enhancement when an offender steals property in excess of $1,500,000. *See* U.S.S.G. § 2B3.1(b)(3)(B) (listing enhancements based on value of stolen property). Similarly, the Commission recommends a four-level enhancement when a robbery victim sustains "serious bodily harm." *See id.* § 2B3.1(b)(7)(E) (describing enhancement for harm to victim). By finding abduction here, the district court equates serious bodily harm with

walking across a store. To reconcile this disparity, abduction must require more than incidental movement.

Finally, the district court's interpretation of the abduction enhancement swallows up the two-level physical restraint enhancement. *See generally Valente*, 915 F.3d at 923 (interpreting Guidelines so that no part becomes superfluous). In addition to the abduction enhancement, the Guidelines provide for a two-level enhancement for physical restraint. *See* U.S.S.G. § 2B3.1(b)(4) (defining enhancement). An offender merits the physical restraint enhancement if the robbery involves "forcible restraint of the victim such as by being tied, bound, or locked up." *Id.* § 1B1.1 cmt. n.1(L). To warrant this enhancement, this Court requires "physical restraint similar to being bound or moved into a locked or at least a confining space." *United States v. Paul*, 904 F.3d 200, 204 (2d Cir. 2018). But the district court's reading of *abduction*—a four-level enhancement—accepts even incidental movement. If the Court allows this interpretation, the physical restraint enhancement becomes redundant. In effect, physical restraint and abduction blend together.

In fact, this Court has refused to broaden the physical restraint enhancement. *See Anglin*, 169 F.3d at 164–65 (rejecting two-level physical restraint enhancement when offender pointed a machine gun at tellers, shouting to get down on the floor). There, the Government contended that repeatedly forcing a victim to "get down and get up" merited the physical restraint enhancement. *Id.* at 164. The Court found this interpretation "problematic," emphasizing that the Commission designs enhancements for "special circumstance[s]," not "virtually every robbery." *Id.* at 165. This Court should heed its own warning.

Thus, the ordinary meaning, when read in context, establishes that incidental movement within the crime scene cannot constitute an abduction. Rather, abduction requires movement to a location beyond the crime scene.

B. The district court's interpretation of abduction conflicts with the purpose of the Guidelines.

The Commission's prescribed purpose—certainty and fairness while avoiding sentencing disparities—confirms this textual interpretation. *See* 28 U.S.C. § 991(b)(1)(B) (identifying purpose of Commission). Courts should not read statutory language in a vacuum. *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S.Ct. 361, 369 (2018). Instead, courts interpret language "to give effect to congressional purpose." *United States v. Al Kassar*, 660 F.3d 108, 125 (2d Cir. 2011) (quoting *Johnson v. United States*, 529 U.S. 694, 710 n.10 (2000)); *see also Kleiner*, 765 F.3d at 159 (applying rules of statutory construction to Guidelines). By creating the Commission, Congress hoped to "avoid[] unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct." 28 U.S.C. § 991(b)(1)(B). To achieve this goal, the Commission designed the Guidelines to bring proportionality and "reasonable uniformity" to federal sentencing. U.S.S.G. Ch.1, Pt.A(1)(3).

But in practice, the abduction enhancement has *increased* sentencing disparities across the country. If Mr. Cizek had committed his robbery in Texas, the Fifth Circuit would accept the four-level abduction enhancement. *See United States v. Buck*, 847 F.3d 267, 271, 276–77 (5th Cir. 2017) (applying abduction enhancement when robbers forced victims to back room at T-Mobile store). On the other hand, if Mr. Cizek had committed his robbery in Michigan, the Sixth Circuit would reject the enhancement. *See Hill*, 963 F.3d at 530, 538 (refusing to apply abduction enhancement when robbers led victims to cell-phone store's back room). This is precisely the arbitrary sentencing disparity Congress sought to avoid.

At the very least, proportionality requires consistent application within the same circuit. But this Court has previously held that directing an employee to the store's back room did not merit even the *two-level* physical restraint enhancement. *See United States v. Taylor*, 961 F.3d 68, 79–81 (2d Cir. 2020). In *Taylor*, robbers entered a T-Mobile store, pretending to have weapons. *Id.* at 71–72. While inside, the robbers took employees and customers "into a back room," where they emptied the store's safe. *Id.* at 72. This Court found these facts insufficient to warrant a *lesser* enhancement. *Id.* at 80–81. Accepting the district court's interpretation today destroys "reasonable uniformity" within this Circuit alone. *See generally* U.S.S.G. Ch.1, Pt.A(1)(3) (noting congressional goal of uniformity in sentencing).

This Court may be tempted to adopt a flexible, case-by-case approach, as some circuits have done. *See, e.g.*, *United States v. Osborne*, 514 F.3d 377, 389–90 (4th Cir. 2008) (praising "flexible, case by case approach" for determining what constitutes a different location); *Buck*, 847 F.3d at 277 (noting different location "should be interpreted with flexibility"). But this post-hoc approach is merely a band-aid. In actuality, this approach exacerbates the nationwide sentencing disparities Congress sought to diminish. As a result, this Court should adopt the only interpretation that comports with both the text and its purpose.

C. As a matter of law, Mr. Cizek did not abduct the store manager.

Under the Guidelines, Mr. Cizek does not qualify for the abduction enhancement. Indeed, Mr. Cizek did not forcibly accompany the manager to a location beyond the crime scene. At all times, Mr. Cizek and the manager remained *at the scene of the robbery*—the T-Mobile store. Even in the back room, they never left 46-01 Queens Boulevard.

Mr. Cizek did not commit an "atypical," violent robbery. *See generally* U.S.S.G. Ch.1, Pt.A(1)(2) (reserving sentencing adjustments for "atypical" circumstances). On the contrary, the record lacks any indication of violence. Mr. Cizek never brandished a weapon. Mr. Cizek never

physically restrained the manager. Mr. Cizek did not even raise his voice. Instead, Mr. Cizek reassured the manager that everything would be okay no less than four times.

Mr. Cizek cannot merit the abduction enhancement when this Court has held that more dangerous conduct does not warrant a *lesser* two-level physical restraint enhancement. *See Taylor*, 961 F.3d at 80–81 (rejecting physical restraint enhancement when multiple robbers pretended to have guns and herded employees into the cell-phone store's back room). Ignoring this decision, the district court relied instead on a Fifth Circuit opinion concerning *armed* robbery. *See* JA12 (citing *Buck*, 847 F.3d at 276–77). In *Buck*, multiple offenders robbed several cell-phone stores while brandishing guns. 847 F.3d at 271. By contrast, Mr. Cizek acted without accomplices and without violence. As such, the district court's reliance is misplaced.

Further, nothing Mr. Cizek did increased the manager's risk of harm. The manager was working by herself at the time of the robbery; Mr. Cizek, acting alone, did not isolate her further. *See United States v. Whooten*, 279 F.3d 58, 61 (1st Cir. 2002) (noting that separating one victim from others can increase risk of harm). Above all, Mr. Cizek did not accompany the manager to a fortress. In fact, the back room has a second door that opens to the outside. As a result, Mr. Cizek never increased the level of danger beyond that of a typical robbery.

In sum, Mr. Cizek did not abduct the manager within the meaning of the Guidelines. Thus, the district court erred in applying the abduction enhancement to Mr. Cizek.

Applicant Details

First Name	**Raquel**
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Applicant Education

BA/BS From	**Harvard University**
Date of BA/BS	**May 2019**
JD/LLB From	**Yale Law School** **https://www.nalplawschools.org/content/OrganizationalSnapshots/OrgSnapshot_225.pdf**
Date of JD/LLB	**May 20, 2024**
Class Rank	**School does not rank**
Law Review/ Journal	**Yes**
Journal(s)	**Yale Law Journal**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Morris Tyler Moot Court**

Bar Admission